Ontario Energy Board

In the matter of a
Reference respecting
Unicorp Canada Corporation/
Union Enterprises Ltd.

E.B.R.L.G. 28

REPORT OF THE BOARD

Volume II—Appendices

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IN THE MATTER OF a reference pursuant to section 36 of the Ontario Energy Board Act, R.S.O. 1980, c.332 from the Lieutenant Governor in Council by Order in council dated the 15th day of February, 1985 to the Ontario Energy Board.

AND IN THE MATTER OF a public hearing to examine and report upon certain matters respecting the implications for energy supply, gas rates and service of a proposed acquisition of certain shares of Union Enterprises Ltd. by Unicorp Canada Corporation; and the question of the need for or desirability of the public review and regulation of both the direct and indirect ownership and control, and transfers thereof, of gas distributors, transmitters and storage companies in Ontario.

BEFORE: R. W. Macaulay, Q.C.
Chairman

D. A. Dean
Member

O. J. Cook
Member

August 2, 1985

VOLUME II - APPENDICES

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Appendix A: A SUMMARY OF THE EVIDENCE

A summary of the evidence of each of the witnesses called before the hearing is presented in this Appendix. A full record of the witnesses' testimony can be found in the transcript of the hearings. Witnesses are here generally listed in the chronological order in which they appeared.

The following individuals also actively participated in the hearing, and represented the following associations.

Mr. J. W. Leech

Mr. Leech, the President of Unicorp Canada Corporation, testified on the following major issues: the reorganization of Union Enterprises, the reasons behind Unicorp's takeover offer, Unicorp's managerial philosophy and financial strength, and the acquisition of Burns Foods.

Mr. Leech indicated that Unicorp was first attracted to Union Enterprises as a direct result of that company's corporate reorganization. A non-regulated holding company is perceived more positively by the investment community than is a regulated utility. This is due to the market perception of regulation as being a process which results in delay and uncertainty. This market perception impacts upon the investment risk by increasing financial risk which in turn increases the cost of capital to the utility and thereby results in depressed share prices. Therefore, when Union Gas restructured its business activities by segregating its utility from its non-utility operations a corporate structure was created which facilitated acquisition and diversification and which was at the same time positively perceived by the capital markets.

Five factors determined Unicorp's takeover decision. First, Union Enterprises shares were readily available on the open market. Second, the investment was consistent with Unicorp's entrepreneurial philosophy of expanding its tangible assets with a minimum amount of risk. Third, earnings from Union Gas represent a relatively stable source of income which would strengthen Unicorp's access to capital markets and accordingly its financial base. Fourth, the increased access to capital markets would stimulate expansion and would ultimately result in an increase in the share prices of Union Enterprises and Unicorp. Fifth, the reorganization increased Union Enterprises' diversification opportunities and Unicorp wished to take advantage of and to utilize its talent to further this expansion and thereby share in accompanying economic benefits.

Unicorp will help the management of Union Enterprises to design and execute the diversification program but will not alter its management structure. Nevertheless, Unicorp's nominees to the Board of Directors of Union Enterprises will play an active role in monitoring all operations including those of Union Gas. For example, Unicorp will use its proven record to raise capital in order to facilitate the

utility's access to external capital markets. However, Union Gas will operate on a fully stand-alone basis, in that the company will be involved exclusively in utility operations, with its own management, without providing inter-corporate loans or guarantees of indebtedness, with an independent Board of Directors selected from representatives originating within the franchise area and with its own head office located in Chatham.

The purchase of Union Gas illustrates an extension of this new managerial style, because it represents a source of stable earnings. Mr. Leech said that this operating style

> ... is becoming more and more an aspect that we are concentrating on, basically because we see that the investment community likes to see a base of stable earnings underlying the growth pattern ... [therefore] our view is to combine ... a stable, weather-dependent and seasonal but somewhat predictable earnings [base] with our asset building concept. We think it creates a very exciting company.

Therefore, while Unicorp was originally conceived in 1979 as an asset rather than income oriented company it has since 1983 re-oriented

its corporate philosophy by emphasizing operation and reportable income objectives.

Regarding Unicorp's financial strength and thus its ability to pay the dividend on the $1.17 preferred shares, Mr. Leech stressed the dynamic nature of the Unicorp group of companies. The cash flow within the group is made available to fund individual financial obligations. Further, Unicorp has access to substantial unutilized lines of credit.

Regarding the purchase of Burns Foods, Mr. Leech indicated that while the Burns Foods acquisition was found to be objectionable by Unicorp's Board of Directors, Unicorp had not formed an opinion as to whether the $125,000,000 acquisition was economically beneficial to Unicorp. He also added however, that in the event that the purchase turned out to be uneconomic, legal action against the Board of Directors of Enterprises would not be undertaken by Unicorp if the directors acted in good faith and with reasonable due diligence in entering into the Burns Foods transaction.

Mr. G. S. Mann

Mr. Mann, the Chairman of Unicorp Canada, addressed several issues of concern. Including the reasons behind the takeover of Union Enterprises, the Burns Foods acquisition, and the managerial philosophy, and financial strength of Unicorp.

Mr. Mann generally corroborated the evidence given by Mr. Leech. Regarding Burns Foods, he added that he had currently received several offers for the purchase of individual divisions of Burns Foods, and intimated that this company may be parcelled up and sold in the near future.

Mr. G. R. Cowan

Mr. Cowan, a Senior Investment Analyst with the investment firm of Levesque Beaubien Inc. was retained by Unicorp. He testified on the subject of Unicorp's financial condition and soundness prior to the takeover offer.

As of December 31, 1984 Unicorp's total interest-bearing debt comprised 48.9 percent of the capital structure as adjusted for after-tax appraised surplus. On the basis of this analysis Unicorp Canada was considered to be conservatively leveraged as compared to other Canadian public real estate companies. Generally, Mr. Cowan concluded that Unicorp Canada had successfully executed its corporate strategy of building asset wealth, and had done so on the basis of a prudently-financed capital structure.

Dr. C. J. Cicchetti

Dr. Cicchetti, the Vice President of National Economic Research Associates Limited and Professor of Economics and Environmental Studies at the University of Wisconsin was retained as an expert witness and appeared on behalf of Unicorp. He testified on matters relating to Phase I and Phase II issues.

His testimony regarding Phase I dealt with the impact of Unicorp's acquisition upon Union Enterprises and Union Gas. Particular emphasis was placed upon the effect of the acquisition on rates and quality of service offered to customers of Union Gas. Testimony in Phase II focused on two issues. First, the desirability of public review and regulation of direct and indirect ownership and transfers of control of a gas utility. Second, the desirability of introducing new rules intended to govern utilities and their affiliated interests (the "Affiliated Interest Rules").

In addressing Phase I matters Dr. Cicchetti concentrated on the impact of Unicorp's acquisition upon the rates and services provided to customers by Union Gas. Five key areas of

regulatory concern were addressed; cross-subsidization, shifting of common costs, weakened credit ratings, lack of funds, and the treatment of non-utility losses.

On the matter of cross-subsidization between the utility and non-utility affiliates, an independent board of directors and ongoing regulatory review of Union Gas' expenditures during the rate case will ensure that all expenditures are just and reasonable.

Regarding the potential for a shifting of common costs onto the utility, since the utility and non-utility operations and accounting will be conducted on a stand alone basis any potential for abuse in this area is greatly reduced.

With respect to the credit rating of Union Gas, since bonds will be issued directly by Union Gas, the underlying capital condition of the holding company will not be evaluated, and accordingly the weak parent problem would not increase the cost of capital to the utility. However, a bond holder may be somewhat reassured by the strength of the parent and, over time, the cost of control to the utility may be reduced. Regarding equity capital, since the utility will be operated on a stand alone basis

it will maintain the ability to issue shares independently from the holding company, and accordingly, the strength or weakness of the parent is not a relevant regulatory concern because it will have no effect upon the financial condition of the utility.

A lack of funds for necessary capital expansion generally results from the unwillingness of regulators to grant a sufficiently high rate of return on the utility's rate base. This problem is not present under current regulatory treatment within Ontario. Further, if a holding company were to abrogate its responsibility toward the utility in this regard, the Board may punish the utility shareholders through its determination of capitalization ratios and by awarding a lower rate of return on common equity. The Joint Undertaking regarding dividend payout by the utility will promote Union Gas's continued financial integrity and will also ensure that the ratepayers are not forced to provide funds to cover losses of unregulated affiliated businesses.

Therefore, given a number of variables such as the financial strength of Unicorp, an independent Union Gas board of directors, the Joint Undertakings and strong on-going regulation, it

is unlikely that these five concerns will materialize, and thus the acquisition will improve the utility's ability to attract capital and should accordingly be approved by the Board.

In his testimony regarding Phase II matters, Dr. Cicchetti emphasized that a pre-approval hearing designed to examine ex post facto a transfer of control is neither economically efficient nor protective of the public interest. Both interests are better served by relying on an established code of behaviour with rules designed to regulate affiliated interest transactions between a utility and its holding company. This alternative model would remove the ad hoc and uncertain nature of the current approach and would also ensure that the Board is not put in the position of becoming a participant in the sales contract.

The "public interest" includes two concerns; economic efficiency and the cost of capital. The economic efficiency concerns relate to our market-oriented economy which requires a free exchange of ownership and control of capital assets. Economic efficiency maximizes the

return on invested capital by rewarding good performance through an increase in share value and an accompanying realization of capital gains.

This incentive attracts investment capital which will ensure that the corporation performs efficiently. Conversely, restrictions on the free transfer of assets results in economic inefficiency because it insulates the utility from market forces.

The cost of capital concerns relate to the general public concern which requires that the economic strength of the utility be protected thereby ensuring that it continues to provide service to its customers at a reasonable cost. Barriers to a transfer of ownership reduce the liquidity of an investment and thereby adversely affects the cost of capital to the utility which in turn impacts upon the price consumers pay for natural gas.

The regulators should not to be concerned with the change of ownership per se, but rather with the need to protect the utility from transactions arising from its association with a diversified corporate structure or a holding company. Essentially, this issue boils down to

two regulatory concerns. First, ensuring that utility assets are not stripped for non-utility purposes and second, ensuring that the utility's assets are not used to secure investments in non-utility activities, which would thereby increase the utility's risk.

These concerns are best protected through an enactment of rules. Dr. Cicchetti stated that while "there is no substitute for strong on-going regulation, there exists a recognized need for new rules to address current market developments and to deal with concerns arising from diversification and holding companies."

The present legislative situation is an uncertain one. Section 26(2) does not provide for regulatory treatment of direct acquisitions of a gas utility. Undertakings, because they are given on a case-by-case basis, do not establish a set of firm standards. There are no general rules which govern the relationship between the parent and its subsidiaries once the acquisition is complete.

Further, Section 26 does not deal with the acquisitions of shares of a holding company controlling a gas utility. Accordingly, the adoption of explicit language was recommended

for the purpose of providing direction to potential investors in utilities, to utilities themselves, and to their affiliated interests.

The proposed code of behaviour (the "Affiliated Interest Rules") would take the form of a series of prohibitions applicable to all natural gas distribution utilities in Ontario, and to their affiliated companies and persons. However, this code would not apply to the utility's holding company. The rules cover nine areas of concern; indebtedness, loans and investments by the utility, loans to directors and management, regulated activities, acquisition premium, cost of reorganization contracts and transactions with affiliated entities, and capital structure.

Certain matters should not form part of the general prohibitions and are more appropriately dealt with through the process of on-going regulation. Matters falling into this category include the allocation of management costs, reorganization costs; dividend restrictions, retained earnings restrictions; capital structure and other related matters.

Certain issues need not be directly addressed by the Board. Such matters include the

definition of control, composition of the board of directors of the utility with the single qualification that the utility board must consist of a majority of independent directors, head office location, and a change in control. This latter concern was qualified to the extent that the affiliated interest rules are put into effect and a complete notice of acquisition is filed with the Ontario Energy Board.

Therefore, the proposed legislation would contain four essential considerations. First, the rules would not operate as a "barrier" to either a direct or indirect change in ownership or control of the utility except in special circumstances. Such special circumstances could include political concerns such as the degree of concentration within a particular industry. Second, a code of behaviour concerning the control and treatment of the utility by the parent should be introduced. Third, the prohibitions outlined in the rules should be appealable to the Ontario Energy Board. Fourth, the rules should be flexible and ongoing regulation should provide for exceptions to those rules for special circumstances.

The "stand alone" principle underscores all the Affiliated Interest Rules. This principle

requires that the utility be operated and regulated as a separate economic entity. Accordingly, the holding company owning or controlling the utility maintains a debt and equity or capital structure which is separate from that of the utility. Similarly, the Board regulates the utility on the basis of a separate capital structure and with regard to an independent evaluation of financial and business risks and returns. Accordingly, one of the rules provides that the utility may not invest in nor acquire an economic interest in non-related activities or related competitive activities. However, this does not imply that the utility should be prohibited from diversifying. With respect to the matter of indebtedness, the rules require that utility assets and earnings are not used to secure the debt, equity or investments of non-subsidiary or affiliated companies or persons.

An independent board of directors, which was defined as being a board composed of a majority of independent members, is crucial in alleviating regulatory concerns such as these relating to capital structures, dividend payouts, retained earnings, investments and other similar problems.

The matter of enforcement forms an integral part of these rules. Three examples of enforcement used by regulatory authorities in the state of Wisconsin are the following; fines, cease and desist order, and denial of unreasonable expenditure inclusions in the utility's rate base.

Dr. Cicchetti asked to consider if he would add to his affiliated interest rules a requirement that a portion of the utility earnings be retained in the event that the retained earnings of the utility are insufficient to maintain its equity at a level enabling the utility to continue its business operations. In the alternative it was suggested that the Ontario Energy Board be granted the power to compel the holding company to provide additional equity capital to the utility on terms that are at least as favourable as it would have obtained in the market for the purpose of maintaining the utility equity at an appropriate level.

Dr. Cicchetti disagreed with this proposal on two grounds. First, the maintenance of a reasonable capital structure through a control of retained earnings and dividend payouts is a responsibility of on-going regulation. Second,

requiring a holding company to become a provider of equity of last resort runs against the grain of free-market economic relations requiring that the shareholder remain anonymous and that his liability be limited. However, he did agree that the option of allowing the utility to go to the equity market directly may be reasonable in circumstances where the holding company refused to provide funds necessary to the utility for capital expansion and thereby brought itself into conflict with its duty to serve.

It was noted that under the Securities of Utilities Act of Wisconsin which is administered by the Public Service Commission, the regulatory authority is empowered to directly regulate a utility's dividend policy. Chapter 184 of that Act provides that a utility may not issue securities without the authorization of the regulator authority. Clause 184.05 sets out the factors which should be considered by the regulatory agency in giving its approval. They include, the character of the proposed securities, the purposes for which they are to be issued and the terms upon which they are to be issued. The terms of issuance to include a detailed description and statement of value of the property or services which will be received as consideration.

Further, Clause 184.11 provides that wherever the commission finds the financial condition of the utility to be impaired it has the power to order an investigation, hold a hearing, and ultimately issue an order directing the utility to cease paying dividends on common stock until such time as the impairment to its financial condition is repaired. It was argued that this provision would help prevent management from paying out a dividend in excess of what is reasonably required to secure the utility's financial stability. In response Dr. Cicchetti said that the existence of responsible management ensures that this scenario would never occur. However, he agreed that if such events did transpire the customers of the utility would suffer.

Mr. K. J. Slater

Mr. K. J. Slater, a Senior Vice President of Energy Management Associates, Inc. of Atlanta, Georgia, was retained by Unicorp. He testified on issues relating to a change of control of a utility.

The performance of a utility directly results from the way in which it is managed and regulated. The role of an owner is twofold. First, to provide capital and second, to put the utility management in place. Thus, the type of ownership of a utility does not directly affect its performance. However, because an owner can determine the way in which a utility is managed the type of ownership or control may affect the utility's performance. The most beneficial structure of control is one which allows a small cohesive and interested group of people to substantially influence the direction and therefore the quality of management. The owners need not necessarily have utility experience, as long as the owners have a sound business background.

Mr. J. J. Oliver

Mr. Oliver, a Senior Vice President of Nesbitt Thomson Bongard Inc., was retained and testified on behalf of Unicorp. He addressed the following issues: the cost of capital to Union Gas, the strength of the parent theory, the prior-approval process, utility diversification, the divident payout rule and the preferred share interlock.

Mr. Oliver indicated that Unicorp's acquisition of control of Union Enterprises will neither materially impact upon Union Gas' on-going ability to raise capital, nor effect its overall cost of capital or creditworthiness. This is primarily due to the fact that Union Gas will continue to raise capital in the external markets in its own name. The market considers three factors to impact upon a change of ownership or control of a utility; a sound regulatory environment, undertakings, and to a much lesser extent the financial condition and managerial approach of the principal shareholder. In the present case the Joint Undertakings to the Lieutenant Governor in Council are a "significant source of comfort" to the investment community.

The strength or weakness of the parent or grandparent will not adversely influence the credit rating agencies, analysts or investors. In fact, a slight advantage may arise from being controlled by a strong parent if for example, that parent is willing to participate in the dividend reinvestment program and thereby inject additional capital into the utility.

In the event that Union Gas requires additional equity to undertake capital expansion, such funds could easily be raised from three alternative sources; additional direct and or indirect purchases of common equity in Union Gas by Unicorp, and direct access by Union Gas to the capital markets.

A prior approval requirement for a transfer of ownership or control would increase the cost of capital to the utility. While the market understands public policy objectives, Mr. Oliver said that

> ... the more specific the guidelines the more readily the market could accept them ... [however] to the extent one creates barriers to entry and creates delays or uncertainties, then clearly that adds to the cost, because it potentially removes certain legitimate inquirers and it dissuades others who don't want to take on the uncertainty.

It was asked whether a rule requiring that a utility not invest in or acquire an economic interest in a non-related activity without the consent of the Board, would impact adversely on the cost of capital to that utility. In response Mr. Oliver indicated that such a rule would not affect the cost of capital. However, if a utility invests in non-utility assets then the cost of common equity would depend upon the profitability and significance of the non-regulated activities.

With respect to the dividend payout rule contained in Chapter 184 of the Wisconsin PUC Act, if such a rule were to be enacted in Ontario it would not increase the cost of capital to the utilities, if this policy were implemented in a liberal manner.

It was contended that the $104,000,000 preferred share obligation from Union Shield Resources owed to Union Gas would only be protected pursuant to the undertakings if Union Enterprises remains financially sound. Accordingly, it was asked whether the introduction of a rule requiring that Union Enterprises and Union Shield Resources not merge nor amalgamate, nor materially sell their assets nor go to the markets for substantial capital would impact

adversely upon the cost of capital to Union Gas. Mr. Oliver indicated that while the cost of capital to Union Gas would not be increased, the rule will adversely impact upon Union Enterprises' ability to provide equity to Union Gas.

Dr. R. W. Waters

Dr. Waters, a professor of Economics and Finance at the University of Toronto was retained and testified on behalf of Unicorp. He addressed the following matters: the utility's duty to serve, the impact of the acquisition upon the duty to serve, and the desirability of additional rules and regulation.

Dr. Waters indicated that as a public utility Union Gas operates in the public interest and therefore has privileges and corresponding obligations. The obligations arise from a duty to serve which results from the privilege of a franchise licensing the utility as the sole distributor of gas within its service area. As a result of its obligation to serve the utility's continued ability to undertake necessary expansion is of critical importance and requires that the utility have continued access to the capital markets on reasonable terms. Accordingly, the public interest requires that the financial integrity of Union Gas be maintained. Dr. Waters concluded that the Unicorp acquisition will not adversely impact upon the financial integrity of Union Gas because the utility is regulated on a "stand alone" basis and because the Joint Undertakings provide

adequate assurances regarding the utility's future financial integrity.

Regarding the issue of whether new rules should be introduced, Dr. Waters indicated that if a regulatory environment does not keep pace with the practice in the corporate world new prohibitions may be required to ensure that the public interest continues to be protected. However, new rules should not be directed towards regulating the transfer of ownership or control but towards establishing a code of behaviour governing the relationship an owner is to have with the utility. The areas which should be controlled are disposition of assets and utility financing. Nevertheless, there is a danger of constraining normal economic activity by introducing a proliferation of regulations intended to cover unusual circumstances.

Dr. W. J. Baumol

Dr. Baumol a professor of Economics at Princeton and New York Universities was retained as an expert witness by Unicorp Canada. He testified on the following matters: the Joint Undertakings, the market economy and regulation, takeovers, concentration of ownership, the regulatory objective of the Board, and the desirability of rules.

Dr. Baumol indicated that given the Joint Undertakings and the existing regulatory environment in Ontario the indirect acquisition of Union Gas by Unicorp does not pose a threat to the public interest and he accordingly recommended that the Board approve this acquisition.

In a capitalist society, market forces provide competitive incentives which promote greater economic efficiency. In short, the presence of competitors compels efficiency. Since utilities enjoy a franchise monopoly they do not face head-on competition and accordingly incentives for efficiency originate from the free market transfer of ownership of utility shares through a takeover.

Takeovers were also perceived to provide necessary economic efficiency incentives to the management of a regulated firm. The combination of diversified ownership, regulation and an absence of head-on competition serves to entrench management inefficiency, and only a takeover can eliminate it. A freely functioning market for the transfer of corporate ownership and control coupled with the realization that shareholders can tender their shares to an acquirer possessing the power to change an entrenched management or management policy acts as a valuable check on management. For this reason management seeks to prevent takeovers.

Concentration of ownership is essentially on anti-trust matter which is not at issue in this case. Concentration was defined as being related to two issues. First, the acquisition of ownership and second, the share of assets in an industry. The Ontario Energy Board should be concerned about the concentration of an industry rather than of ownership. It is concentration within an industry which is detrimental to the public interest and economic efficiency because it reduces competition. In the context of concentration of ownership the issues are different. In this context the focus is upon preventing economic exploitation of the utility

through evasion of regulatory restraints. However, a concentration of ownership is beneficial in merging ownership with control which has the effect of constraining management to act efficiently.

The concepts "ownership" and "control" were distinguished. The term "control" was defined to technically comprise the ownership of fifty percent or more of a company's outstanding voting shares. However, effective control is often obtained by less than that amount where the remaining shares are widely dispersed. Control in this wider context results from the following circumstances. Direct control occurs when an individual or group control a significant percentage (for example 20 percent) of voting shares, and act jointly in the exercise of control. Indirect control occurs under the same circumstances but is exercised through a holding company. Accordingly Dr. Baumol indicated that, "there is no simple formula for a numerical threshold, and if any specific number is correct in the instance, it is likely to be wrong in another".

The regulatory objective of the Ontario Energy Board requires that a franchised utility be

regulated in a manner which will best serve the interests of the consuming public. The public interest requires a maximization of benefits to consumers of natural gas as well as an adequate return to shareholders. This later requirement is particularly important to the utility's ability to attract investment capital required for the expansion of its facilities.

When a utility is controlled by a holding company, in common with unregulated corporations, a concern arises that the unregulated corporations may benefit from this common ownership to the detriment of the utility. Accordingly, he recommended that instead of inhibiting the transfer of ownership through a pre-acquisition approval hearing, the Board should adopt rules governing economic relationships between regulated and unregulated affiliated enterprises, because only rules will prevent future problems. Such rules would regulate economic relationships between such entities and would relate to purely financial transactions including: dividend policy, exchanges and sales.

These rules would not preclude a utility from diversifying into non-utility but related enterprises for two reason. First, affiliated enterprises create economies of scale which

benefit society in general. Second, the utility benefits from the unrelated affiliations because such enterprises add to the utility's financial integrity by reducing some of the risks to which it is subject.

Mr. F. M. Edgell

Mr. Edgell, the Senior Vice President of Utility Operations for Union Gas and a Vice-President of Union Enterprises testified on behalf of Union Gas. He provided an overview of operations and indicated the importance of capital expenditures in maintaining the quality of service to a utility's customers.

The evidence presented showed that the company's five year forecast of capital requirements, as expressed in millions, will be as follows: for 1985 $78,906; for 1986 $108,000; for 1987 $127,640; for 1988 $179,653; and for 1989 $108,099.

Mr. M. J. O'Neill

Mr. O'Neill, the Treasurer of Union Gas and Union Enterprises appeared on behalf of Union Gas. Testimony given by Mr. O'Neill covered two areas of concern; the preferred share interlock, and the Burns Foods transaction.

As a result of the reorganization, Union Gas sold the non-utility assets to Union Shield Resources for $200,000,000. Part of the consideration received by Union Gas included a preferred share issue from Union Shield Resources for $104,000,000. Under the terms of the reorganization agreement, Union Shield Resources is obligated to pay an annual dividend of $9,000,000 to Union Gas to cover the $104,000,000 obligation. Union Gas will in turn dividend the $9,000,000 up to Union Enterprises as a special dividend over and above the $27,000,000 annual dividend. The preferred shares are redeemable within 10 years. A sinking plan or any other plan for partial redemption has not been established to support the $104,000.000 obligation from Union Shield Resources to Union Gas.

Union Shield Resources expects to pay for the interlock from income derived from non-utility investments. Such income would include an

annual dividend for $1,200,000 from NUMAC to Union Shield Resources and a cash flow of $20,000,000 from PreCambrian Resources. In addition, PreCambrian Resources has access to a $50,000,000 line of credit. Capital expenditures are not planned for either PreCambrian or NUMAC and accordingly there will not be a drain on the dividends received by Union Shield Resources.

It was questioned whether the Burns Foods acquisition is self-financing, given the company's expected annual cash flow of $20,000,000 and its projected capital expenditure program of $13,000,000 per year over the next five years. Union Enterprises' obligation to pay $10,000,000 annual dividend to Burns Foods will be sufficient to cover cash shortfalls which may arise in the early years. However, Union Enterprises and Burns Foods both have sufficient lines of credit.

The fact that Unicorp as a parent company exhibits weaker financial ratios than Union Gas or Union Enterprises, may influence the ability of Union Gas to raise capital at comparable rates. However, it was noted that Mr. O'Neill's financial ratios are based upon three assumptions which if altered would

indicate that Unicorp is a stronger parent than the ratio have represented it to be. First, the ratios were compiled without the benefit of Unicorp's most up to date financial projections. Second, minority interests are not treated consistently in that they are included in the preference shares held by Union Enterprises while excluded from common equity. Third, the calculations assume that Burns Foods, Union Enterprises, and Unicorp pay taxes at the normal corporate rate of 50 percent. In fact, Unicorp does not pay taxes and Burns Foods does so at a rate lower than 50 percent. Also, to the extent that the market views Union Gas as raising capital on a stand alone basis, the financial ratios become completely irrelevant.

Mr. T. E. Kierans

Mr. Kierans, the President of McLeod Young Weir Limited, was retained as an expert witness by Union Gas. He testified on the following matters: the cost of capital, the reorganization of Union Enterprises, the Settlement Agreement and the Joint Undertakings, the preferred share interlock, the advisability of additional rules and regulation.

Mr. Kierans testified that the reorganization of Union Gas did not affect the credit rating of the utility. The two leading Canadian rating services, Dominion Bond Rating Service and Canadian Bond Rating Service continued to rate the securities of Union Gas highly. In fact, the creation of a pure utility was regarded as having reduced the risks associated with non-utility investments and was therefore perceived positively. Further, the Undertakings given to the Lieutenant Governor in Council, intended to ensure the continued strength of Union Gas, and to protect the dividend and redemption obligations of Union Shield Resources to Union Gas, were important in appeasing the concerns of the financial community.

The Settlement Agreement and the Joint Undertakings have impacted positively upon the market's perception of Union Gas and will accordingly permit the utility to raise common equity capital on reasonable terms. Specifically there were four positive influences. First, a positive regulatory environment without additional controls and procedures. Second, assurances that the financial integrity of Union Gas will be retained, including the assurance that Union Gas will have access to internal sources of capital on terms as reasonable as it may obtain externally. Third, capital expenditures will be initiated and implemented thereby ensuring a high standard of service on an ongoing basis within the franchise area. Fourth, existing management will be retained.

The preferred share interlock will not be adversely affected by the Unicorp acquisition for two reasons. First, the undertakings given by Union Enterprises at the time of reorganization ensure that Union Shield Resources will be capable of meeting annual dividends and future redemption obligations. Unicorp has adopted this undertaking. Second, the Joint Undertakings further provide for an independent board of directors at the level of Union Gas and Union Enterprises and for a commitment to maintain the preferred share obligation.

The fact Union Enterprises does not have an income flow of its own is not relevant to its financial strength or to its ability to fulfill this dividend commitment because Enterprises consists of a very valuable accumulation of assets.

While takeovers help to remove entrenched management and thereby promote economic efficiency there must be sufficient regulatory policies in place to ensure that the public interest is protected. This goal is accomplished through the prohibition of adverse dealing practices and combinations, and not through the prevention of takeovers. The public interest requires the Ontario Energy Board to examine two interests. First, that of the shareholders to ensure they are receiving the best possible consideration for the value of the assets. Second, that of the consumers to ensure that the service will continue to be provided at a reasonable cost.

Because the utility has a duty to serve, the Ontario Energy Board should ensure that the

utility's management is not accumulating large pools of assets to build a larger company by shifting the burden of that cost to the consumer. It does this by double-leveraging the company in order to enhance capital extraction at the risk of increasing the cost of capital to finance the rate base. Action on behalf of the Ontario Energy Board in this regard would not constitute on unwarranted interference with managerial discretion. This type of example is an illustration of "where the rubber meets the road between management's discretion and the Board's legitimate concern as to whether something is economical or appropriate."

Undertakings are necessary to protect the financial integrity of the utility. As long as the required undertakings are provided the Board need not inquire into the personality of the entity acquiring control. The Board does not have the authority to demand undertakings, but it posses the ongoing power to regulate the utility and thereby punish. Therefore, it does not require a formal enforcement mechanism. Further, an individual making a major investment is prepared to work within the existing regulatory environment. If, however, an investor does not voluntarily negotiate the undertakings with either the Board or the Ministry

of Energy then the purchaser should be given a "cooling off" period in order to negotiate such undertakings.

The undertakings need not necessarily be enshrined into rules of law. This approach is self defeating because strict rules are inflexible and therefore incapable of foreseeing future occurrences. Mr. Kierans rejected Dr. Cicchetti's proposition that rules reduce uncertainty in the market place and therefore impact positively upon the cost of capital. He said that

> "the best security that any investor has got in this system right now is the embedded series of decisions, historic decisions, that indicate what will happen in the future".

By establishing rules the Board will be establishing a basis for a new set of decisions. This process is very upsetting to investors and may increase the cost of capital to the utility.

Mr. Kierans was particularly against a rule intended to control a utility's dividend policy. The dividend payout policy of any company is within the authority of the board of directors of a company who act upon recommendations from management. Regarding a dividend policy

having a "worst case" scenario provision he said that,

> to constrain within a market economy on the basis of the unsupported assessment of the possibility of something developing is a very serious intrusion on the correctly presumed abilities and good faith of management and the Board of Directors.

While the introduction of a formalized monitoring process will not necessarily increase the cost of capital it should not be introduced for the following reasons. First, a latent code of behaviour exists within this jurisdiction and is understood by the investment community. Second, an investor is unlikely to "toy" with the regulatory environment because this is the single largest determinant of the quality of a utility investment. Third, existing close supervision of a utility's cost of service and operations constitutes an assurance that the interests of the consumer will be protected. Also, the Board may call in the utility on its own motion and subject it to examination. Fourth, additional monitoring may impact on the discretionary judgment of management and thereby distract it from efficiently managing the utility. Mr. Kierans said, "the process is

working quite well without the importation of a new set and layer of regulation."

Dr. G. R. Hall

Dr. Hall, the Vice President of Charles River Associates of Boston, Massachusettes, and a former Commissioner of the U.S. Federal Energy Regulatory Commission was retained as an expert witness by Union Gas. He addressed the following matters: the role of regulation, the advantages and disadvantages of a holding company structure, the utility's obligation to serve, and the advisability of rules and additional regulation.

He testified that a utility is granted an exclusive franchise to serve within a geographic region, which creates a monopoly market free from competition. Monopoly results from the fact that in certain industries a simple firm can supply the market at a lower cost of production than can a number of competing firms serving the same market. This process has been referred to as an "economy of scale and scope". However, due to the fact that the service is considered essential to a certain standard of living the government intervenes through regulation to control both prices and entry into such markets.

Dr. Hall described a regulated monopoly as constituting a social contract between the

utility and the regulators. Under the social contract the utility possess a commitment or duty to serve present and future customers at just and reasonable rates. This obligation requires the utility owner to forego "windfall" profits but also requires that the cost of service to the customers includes a fair return to the shareholders of the utility. The regulator possess a corresponding obligation to grant a rate of return that will permit the utility a fair chance to earn a compensating return on the investment.

Ownership of a utility by a diversified holding company is desirable for two reasons. First, the holding company structure assists the regulator in distinguishing regulated from nonregulated activities. Second, the holding company structure permits financing by subsidiaries or by the holding company and thereby increases avenues for access to capital.

Four disadvantages militate against the holding company structure. First, inter-corporate dealings that are not at arm's-length will result in higher prices or a higher than market-value allocation of cost for goods and services to the utility. Second, the customers of the utility may cross-subsidize the unregulated

corporate affiliates. Third, the ability of the utility to access capital on reasonable terms may be adversely affected by the wrong type of capital structure. Fourth, the misuse of the holding company structure may result in a conflict of interest which can adversely affect the ability of the utility to carry out its duty to serve. Accordingly, the Board should ensure that the acquisition of Union Gas does not adversely affect the ability of the utility to raise capital on favourable terms. This requires the regulators to assure that those managing or controlling the holding company have, first, adequate resources, and second, that they do not have a conflict of interest which may affect their ability to ensure that the utility adheres to its obligation to serve.

While in theory the "milking" of a utility can be controlled, in practice this may not be possible because it may involve the regulators in the "micromanagement" of the utility which is bad public policy, unsupportive of consumers interests. A more appropriate approach would ensure that the utility first, has access to capital required for expansion and, second, is adequately protected against conflicts of interest with the holding company.

The utility's obligations to serve necessarily require that the utility undertake major investment programs of capital expansion. Such programs will require the utility to put funds into capital expansion despite the existence of higher rate of return from other investments.

The Joint Undertakings provide Union Gas with adequate financial protection, because they ensure access to required capital, they guarantee sufficient independence of action regarding external financing, access to internal financing on reasonable terms, an independent Board of Directors, and that the utility will not be responsible for the financing and debt of affiliates. Accordingly, the Board should approve the present acquisition on the grounds that the undertakings provide adequate protection to the Ontario gas consumer.

Due to the fact that the public interest requires that the Ontario Energy Board closely examine the impact of a proposed acquisition upon the utility's ability to meet its obligation to serve and its ability to maintain itself in sound financial condition, the pre-approval review process pursuant to Section 26(2) of the Act should be extended to apply to

a holding company acquiring over 20 percent of a utility.

Dr. Hall rejected Dr. Cicchetti's proposal to introduce a formal set of rules for four reasons. First, rules currently exist and are being followed. Second, even if rules are introduced a change of ownership should undergo governmental review because the public will express some concern in this regard. Third, a review will be required to ensure there has been compliance with the rules. Fourth, each acquisition will be unique in nature and extenuating circumstances will require the investors to seek waivers. The public interest is best protected by the regulators through a series of concerns set out as conditions which must be fulfilled and, by determining compliance with such rules through a preliminary review conducted on a case by case basis.

Regarding the issue of diversification, Dr. Hall preferred that it take place through the holding company rather than through the utility. However, he did not disapprove of utility diversification per se as long as the non-utility activities are restricted to subsidiaries of the utility, and the utility is

adequate protected against non-arm's length transactions and cross-subsidization of non-utility subsidiaries.

The Ontario Energy Board possess the power to indirectly examine dividend policy through an investigation and approval of the utility's financial integrity. Therefore, it should not attempt to directly control the dividend policy of a utility because this responsibility is the particular concern of management.

Mr. W. Darcy McKeough

Mr. McKeough, the Chairman of Union Gas and Union Enterprises appeared on behalf of Union Gas. He testified on the following matters: the entrenchment of management, the reorganization of Union Enterprises, the utility's duty to serve, Section 26 (2) and the advisability of additional regulation, the undertakings, the common share float and the acquisition of Burns Foods.

Mr. McKeough testified that management inefficiency is not entrenched by the absence of a takeover treat. In fact the takeover process had a short term negative impact on senior management morale. Management efficiency is encouraged by the vigilance and interest expressed by both the utility's board of directors and the regulating authority.

Section 26(2) is intended to provide a mechanism for the review of concentration of ownership within a gas utility. As such, when this control results indirectly through a holding company it remains within the spirit of this provision. Accordingly, the Ontario Energy Board should review an acquisition of indirect control to determine whether it is in fact in

the public interest. Because Section 26(2) governs holding companies only in spirit it should be extended and made to apply as far up the corporate chain as is necessary.

Ownership of a public utility imposes a trust obligation on the directors and a duty to serve upon the management. The utility must be prepared to undertake capital expansion under which the pay-back period is uncertain or deferred. Accordingly, the strength and initiative of the parent to undertake such capital expansion should be a matter of concern within the context of a pre-acquisition review, and provides the reason for examining the background and credentials of those acquiring control of a utility.

Union Gas will require future capital expenditures to maintain and expand the present storage, transportation and distribution system. An estimated total between $78,000,000 to $179,000,000 will be required over the next five years. The expenditures are essential to Union Gas' ability to service its franchised area.

Due to the size of the capital expenditures Union Gas must have the ability to raise large

sums of capital. Its ability to do so will depend upon the market's perception of the strength and stability of Union Gas and of its parent Union Enterprises. Therefore, the financial strength of Unicorp is of importance in determining the market's perception of Union Gas' financial stability for two reasons. First, if Unicorp encounters difficulties in meeting its preference share dividend requirements it may resort to additional debt financing. Second, if Unicorp finances by increasing the leverage and risk associated with the debentures and preferred shares of Union Gas then the utility's capital expenditure programs may not be undertaken. However, the joint undertakings adequately address these concerns.

The undertakings are binding and enforceable by the regulators or by the government through retroactive legislation. The Ontario Energy Board may wish to enumerate the undertakings into a set of policies but should not enshrine them in the form of legislation or regulations because rules are inflexible. Also, rules will require exceptions which will ultimately result in uncertainty, because legislation invites courtroom litigation.

In particular the Ontario Energy Board should not enact rules governing dividend policy because it already possess the power to regulate the utility's dividend payout policy indirectly. In fact, the undertaking placing a three year restriction on the payment of dividends has had a "dampening" effect in the market. Likewise, the Ontario Energy Board should not pass a rule governing the issuance of securities because such regulation interferes with management discretion and may restrict the utility's access to "windows" in the market for borrowing.

A large concentration of Union Gas shareholders reside within the franchise area. The majority of such small shareholders would prefer the utility to remain widely held as opposed to being concentrated in the hands of a single owner.

However, a common equity float is desirable for a utility for two reasons. First, it ensures public participation in the utility's ownership. Second, it facilitates the OEB's determination of rate of return because it presents the Board with evidence of the price at which the stock is trading. Mr.McKeough said that this is a long-term goal for Union Gas.

Regarding the matter of diversification Mr. McKeough indicated that the purpose of reorganizing Union Gas was to separate the utility operations from the non-utility assets for the purpose of simplifying utility regulation and to facilitate expansion into non-regulated areas. Also, Union Enterprises could shelter taxable expenses which would not have been allowed by the Board as part of the rate base of Union Gas. Nevertheless, Mr. McKeough maintained that a utility must be permitted to expand into non-utility activities of a restricted financial nature. Such additional sources of income would benefit the utility's customers. Due to their limited nature such activities would not complicate the regulatory treatment of the utility.

Burns Foods was purchased by Union Enterprises because it is a low-risk investment with a high positive cash flow which will enhance the ability of Union Enterprises to attract capital on favourable terms. It is also hoped that it will in the future result in an infusion of common equity capital through the conversion of the preferred stock. Further, the shareholders of Burns Foods agreed to accept preferred shares rather than cash as consideration for the sale.

This acquisition does not unduly concentrate the voting control of Union Enterprises. The voting shares issued to Burns Foods represent less than 20 percent of the total number of voting shares outstanding in Union Enterprises and therefore falls within the purview of Section 26(2) of the Act.

The Board of Directors of Union Enterprises had approved the acquisition, but Mr. Eyton and Mr. Dunford, who were absent, subsequently dissented.

Mr. R. Martin

Mr. Martin, the President and Chief Executive Officer of The Consumers' Gas Company appeared on behalf of Consumers Gas and testified on the following Phase II issues: The public interest, the holding company structure, the undertakings and financial integrity of a utility, the desirability of additional formal rules and the common share float.

Mr. Martin accepted the existence of Section 26(2) as a fact but was concerned about any restrictions upon the free transfer of the shares of either a utility or of its parent. The public interest is best protected by provisions other than those found in Section 26 of the OEB Act. Such provisions include those found in the Securities Act, the Combines Investigation Act, and the common law. Competition from other suppliers of energy also acts as a control on the utility.

The ownership of the utility's shares does not effect its obligation to serve. This obligation is implied from its franchise, and if its owner fails to fulfill the utility's obligations and duties the franchise may be reviewed and/or revoked. Further, the experience of the

Consumers' Gas company has indicated that a utility can benefit from the presence of a strong parent company such as Hiram Walker. Specifically, the strength of the present has strengthened the financial integrity of Consumers Gas by improving its debt and preferred share ratings. In addition, because the cost of capital is directly related to Consumers' Gas rates ownership by a holding company has not caused utility rates to increase.

Provided the financial integrity of the utility is protected, diversification within a utility should not be restricted. Management must be permitted to maximize the efficient utilization of assets because utilities within Ontario are entering a mature cycle of market saturation. Continued growth is essential for the purposes of attracting managerial talent and maximizing profits.

The undertakings need not be enshrined into rules of law for the following reasons. First, such undertakings are taken very seriously by the regulated industry. Second, the OEB expressly reviews and rules upon matters relating to a utility's financial integrity as a regular part of the rate hearing process. Further, a

rule governing the issuance of securities will impair the company's ability to finance its capital requirements in the most flexible manner. Delay resulting from a pre-approval would restrict the utility's access to market "windows".

The public float was created pursuant to an undertaking given at the time Consumers' Gas purchased Hiram Walker. As part of the float common shares were issued at a cost of $14.00 per share plus one warrant. As of April 19, 1985, that value has substantially appreciated to a total share and warrant value of $30.00.

Mr. Martin favoured the existence of a common float because it provides three major benefits. First, it is an additional source of common equity to finance capital expansion. Second, because it is an additional finance avenue it provides greater flexibility. Third, it provides a proxy to the OEB for market efficiency. In addition, the common float renders management responsible to minority shareholders and thereby provides encouragement to increase profits.

Mr. R. Graham

Mr. Graham the President and Chief Executive Officer of Inter-City Gas, testified on Phase II matters. He addressed the following issues: the extension of Section 26 (2), and the enforceability of undertakings.

He believed that Section 26(2) was enacted for practical political reasons and that it is not required in practice. This section was intended to cover a concentration of ownership within the industry rather than a concentration of ownership within a particular utility. Therefore, he recommended that Section 26 (2) be revised to clearly deal with cross-ownership between utilities. Under this proposal, a pre-acquisition approval of the Board would be required only where a gas utility purchases over 20 percent of the voting shares of another gas utility. Similar transactions as between holding companies should also be covered through the mechanism of a "reviewable transaction provision". Powers of this nature should be accompanied by appropriate remedies applicable to both utilities and to their parents or grandparents.

The undertakings are enforceable and binding. However, a provision should be added to the OEB

Act which would enable the Supreme Court of Ontario to direct compliance with an undertaking under penalty of a contempt citation for any refusal to comply. Also, undertakings given by a holding company should be made binding on any and all successor corporations.

Mr. H. Andrews

Mr. Andrews the Vice-President of Finance and Regulatory Affairs of Northern Central Gas testified on behalf of the utility. He addressed the following issues: the holding company structure, reorganization, the financial strength of the parent, undertakings, and the desirability of additional formal rules.

Mr. Andrews indicated that despite Inter-City's takeover of Northern and Central Gas the utility continues to be operated independently. Operating decisions are made by the utility's management who are also responsible for preparing its operating and capital budgets. In addition, the timing and type of financing required by the utility have continued to be determined by the Vice-President of Finance of Northern and Central Gas.

Northern and Central is currently undergoing a reorganization the purpose of which is to permit the utility to operate on a "stand alone" basis. This is a positive step for two reasons. First, it will facilitate the regulatory process and second, it will assist the utility in future financing by establishing for it an independent credit rating.

The financial position of a parent company does not affect the credit rating of the utility or its ability to raise independent financing.

However, a strong parent with a credit rating superior to that of the utility may advantage the utility by assisting it to raise capital on a more favourable basis. The parent may also provide financing to the utility on a back-to-back basis. Possibilities such as these provide for greater flexibility in raising capital.

Undertakings are not necessary to protect the public interest which is concerned with the utility's ability to provide reliable service at reasonable rates. A prudent owner with a substantial investment will not behave in a manner which will impair his investment in the utility. If an owner acts in a non-prudent manner, contrary to the behaviour prescribed by the undertakings then the OEB can punish this behaviour by rewarding a reduced return on rate base.

Rules and regulations of the nature advocated by Dr. Cicchetti are not necessary. Such matters are best left to on-going regulation and review in the context of rate hearings. If

however, the OEB adopts an additional layer of regulation it should not adopt the following rules. First, loans to affiliates should not require the pre-approval of the Board. Such matters may be examined during the rate hearings. Second, the utility should be capable of expanding, without prior approval, into related activities which promote the sale of gas. Third, the cost of acquiring other small utilities should be allowed in rate base. Fourth, costs of reorganization benefiting the utility should be included in the cost of service. Fifth, a public utility should not be prohibited from making loans to its directors because this is accepted corporate practice.

Dr. W. T. Cannon

Dr. Cannon, an Associate Professor of Finance at Queen's University was called by Ontario Energy Board Counsel to testify on issues relating to Phase I and II matters.

Regarding diversification, he indicated that a "utility-centred corporate organization" should be permitted to employ its accumulated retained earnings to diversify into non-regulated activities provided the regulators impose limits upon dividend payments and the return on capital to shareholders. Accordingly, regulators should be concerned with the manner in which utility diversification occurs and should impose rules or undertakings to ensure that any potential detriment to the utility is minimized.

Five advantages are derived from diversification. First, where diversification takes place in related activities market and operating efficiencies result. Second, beneficial synergies may result from a spreading of overhead expenses. Third, a diversified company may more readily attract talented management. Fourth, it could reduce the cost of common-equity capital to the utility by providing profitable outlets for excess capital. Fifth,

it may promote greater cyclical or seasonal stability in earnings and may thus provide improved access to sources of financing on more favourable terms than would otherwise be available to a pure utility.

The major disadvantage of diversification is that it provides a greater opportunity for "milking" the utility through non-arms length transactions and financial arrangements with non-regulated affiliates. Other disadvantages include: attracting management not suited to the long-term conservative operations of a utility, foregoing capital expansion required by the utility in favour of other high-risk high-return activities, and finally, diversification tends to increase the utility's investment risk and its cost of capital.

Several "drawbacks" also exist. Most prominent is the virtual elimination of conservative investment opportunities available to Canadian investors, particularly to "widows and orphans". The demise of low-risk investment opportunities will "effectively truncate this spectrum of opportunities, diminishing the breadth and diversity of the Canadian stock market and depriving many investors, not just widows and orphans, of those stocks exhibiting

characteristics ideally suited to their particular risk preferences and income needs. Over time this can cause the market to lose some of its political legitimacy and would negatively impact upon Canadian "pluralistic capitalism".

Dr. Cannon recommended that a utility be permitted to diversify through the holding company structure rather than through subsidiaries of the utility. However, existing investments in what would become prohibited areas should be "grandfathered".

Seven reasons favour diversification through the holding company structure:

i) income and expense flows amongst subsidiaries will not be comingled and the utility will be easier to regulate;
ii) greater financing flexibility will result from dual access to capital;
iii) the utility may be scrutinized by an independent board of directors;
iv) A seperate corporate identity will enhance managerial responsibility;
v) identification and monitoring of affiliated transactions will be facilitated;

vi) financial difficulties experienced by an affiliate are less likely to impact upon the utility's credit rating or impair its ability to attract capital at reasonable terms;

vii) common shares of a utility may become available and traded on the market (where the shares are not 100 percent owned by the holding company).

Economic efficiency advantages derived from unfettered takeovers are reduced in an environment of monopoly and regulation. This is mainly due to two facts. First, management is not encouraged to enhance efficiency because cost savings over the long term will benefit the customers. Second, utility share prices do not fully reflect management inefficiencies. In Ontario this theory does not have practical application for the future because the three major utilities have already been taken over.

In the absence of rules or undertakings the strength or weakness of a parent company or grandparent company will negatively impact upon the cost of capital to the utility. The nature of the parent if it is for example, "expansion-minded" or aggressive may jeopardize the utility's access to certain segments of the capital

market. The parent's attitude and intentions may also influence the effectiveness of regulation, and thereby impair the utility's ability to fulfill its obligation to serve under the social contract.

A weak parent may attempt to extract resources or other undue benefits from the utility and thereby diminish the utility's financial strength and credit-worthiness which in the long run, will impact upon the utility's cost of service. Possible detriments could include excessive dividend payments, intercorporate loans and/or guarantees of indebtedness, sale of utility assets for the benefit of the parent, and non arms-length purchases from the parent.

Although it is financially fully extended, Unicorp currently enjoys a strong financial position. Further, the Joint Undertakings currently in place will sufficiently protect the financial integrity of the utility.

Because the nature, intentions and financial condition of the parent impact upon the utility, there should be some "public input" into the arrangements which are to govern the utility and its controlling shareholder. This

public input should take the form of legislation which establishes generally applicable rules. Such rules should be of a nature which would required only exceptional intervention by the Ontario Energy Board.

Rules would provide two advantages; equality of treatment, and certainty. Also the rules must be broadly drafted and administered in a flexible manner to ensure equitable treatment on a case by case basis.

If a set of rules is put into place and the Board monitors compliance through the rate hearing process then a "pre-event" hearing process will constitute an unnecessary impediment to legitimate takeovers. However, a "post-event" hearing should be held to provide the Board with an opportunity to effect remedies where the new owner is found to be incapable or unwilling to "live up" to the required rules.

Dr. Cannon recommended acceptance of Dr. Cicchetti's affiliated interest rules and proposed that they be extended to include the following six rules.

i) The utility should be operated on a fully "stand-alone basis" with a separate capital structure and an independent board of directors.

ii) Rate base assets should not be sold without the approval of the Ontario Energy Board.

iii) The OEB should approve all share repurchases and all issues of a new class or series of debt or equity. This provision should extend to the utility's parent where the utility has guaranteed the indebtedness or has a loan with or owns securities of, its parent or of an affiliate.

iv) The OEB should have the power to suspend dividend payments where the financial integrity or equity base of the utility is being threatened.

v) Utilities whether or not wholly owned by a single parent, should be required to publish and publicly circulate their annual audited financial statements.

vi) A utility should be required to have a minimum of 20 percent of voting control distributed within the Canadian investing public.

It was noted that the dividend veto rule should be used only in exceptional circumstances. It is not intended to control the utility's dividend payments or its payout ratios. Rather, it will enable regulators to regulate better the level and adequacy of the utility's equity capital base in order to ensure that its financial integrity is not being threatened.

Dr. Cannon listed ten benefits associated with having a 20 percent common float.

i) The board of directors would be responsible to a wider ranger of shareholders.
ii) Minority shareholders would have the opportunity and incentive to monitor the activities of management and of the controlling shareholder and be in a better position to take corrective action.
iii) (i) and (ii) would provide an additional layer of protection to preferred shareholders and unsecured bondholders.
iv) It would establish a share price and performance "track record" for the utility's shares and a selling price for the shares where the controlling shareholder sells his interests.

v) It would promote managerial efficiency through the implementation of incentive compensation programs which are directly linked to the market's assessment of the utility's performance.

vi) It would offer the original shareholders a choice between shares of a utility and those of the parent.

vii) It would broaden the range of security investment options available in the Canadian stock market.

viii) It would result in public relations and public confidence benefits.

ix) An independent market valuation would aid the regulators in assessing managerial efficiency and the utility's risk return performance.

x) It would reduce the possibility of political pressures being brought to bear upon regulators to give a low rate of return or equity.

However, Dr. Cannon agreed with Mr. O'Neill that the preferred share inter-lock between Union Gas, Union Enterprises and Union Shield Resources would preclude the implementation of a float. Since this is the case, then the OEB should attempt to rectify the situation, otherwise the cost of equity capital to Union Gas may increase.

Further, Dr. Cannon recommended that Unicorp's accumulated purchases of Union Enterprise's voting shares should be limited to 80 percent until the government has dealt with the OEB's report on Phase II matters or until the passage of two years. Also, the preferred share interlock should be grandfathered but under the condition that the parties undertake to re-design the arrangement so that (a) it is better secured within Union Gas, and (b) it does not impair the ability of Union Gas to issue common equity on its own. In conclusion, the Board should recommend that the Lieutenant Governor in Council approve the transfer of Union Enterprise's shares to Unicorp on the condition that the rules proposed by Dr. Cicchetti and Dr. Cannon are enacted as legislation.

Mr. J. MacNaughton

Mr. MacNaughton a Director of the investment firm Burns Fry Limited, was retained by Union Enterprises under instructions from the Ontario Securities Commission for the purpose of providing an independent valuation of the Burns Foods acquisition. The issue which Burns Fry was asked to resolve was whether Burns Foods was acquired at a "fair price". Mr. MacNaughton appeared at this hearing and gave similar evidence.

In determining whether the purchase price was financially fair to the shareholders of Union Enterprises, Burns Fry valued both Burns Foods and the consideration paid by Union Enterprises.

Six business methodologies were considered and three were retained as being applicable. The primary methodologies considered were: normalized earnings and projected/market value earnings. The discounted cash flow analysis was considered as a secondary or supporting methodology. Based upon this review he concluded that the acquisition of all of the shares of Burns Foods was at a price which is fair to the shareholders of Enterprises given the value of the consideration deliver by Enterprises.

The value of Burns Foods was determined on a consolidated and on an line by line basis. On the basis of the normalized earnings approach for the earnings were as follows; 1980, $11,300,000; 1981 $14,400,000; 1982 $14,400,000; 1983 $14,000,000; 1984 $9,400,000 and the expected earnings for 1985 are $10,400,000. An average for the period between 1981 to 1985 shows that normalized earnings were $12,500,000. Thus, on a normalized earnings approach Burns Foods is worth $172,000,000 to $192,000,000.

It was noted that if factors such as strikes, and a $13,500,000 pension fund overpayment are not taken into account then the normalized earnings for the period between 1980 and 1984 would be as follows; 1980 $13,200,000; 1981 $14,400,000; 1982 $9,600,000; 1983 $11,600,000 and 1984 $7,100,000. If $14,400,000 in 1984 earnings were used, notwithstanding a 30 percent acquisition premium and a 10.9 percent to 11.6 percent capitalization rate, then the normalized total value of Burns Foods would be in the range of $92,000,000 to $101,000,000.

It was also indicated that because the normalization approach to earnings uses market capitalization multiples and applies them to

normalized earnings there is a double counting tendency in this valuation method. Mr. MacNaughton contended that it is appropriate to normalize earnings and to use market multiples. He did however note that there is some overlap in the market multiples used because they attempt to reflect that Burns Foods has some values that are not perfectly reflected in its earnings statement. Further, he indicated that in his opinion the range of values flowing from the projected earnings approach reflect the more appropriate value of the Burns Foods acquisition.

Under the perspective earnings approach, comparable the shares of Canadian food processing companies traded at approximately 10.9 to 11.6 times their earnings. These capitalization factors produced a range of values that Burns Foods would have traded in the public market during the first quarter of fiscal and calendar 1985 for $106,000,000 to $116,000,000 when a 30 percent acquisition premium and $7,000,000 in redundant assets are taken into account. Therefore, on the projected earnings approach the value of Burns Foods was $144,300,000 to $158,000,000.

The value of the consideration provided by Enterprises was determined to be 11.75 to 12.65 for the convertible securities and 12.25 and 13.25 for the retractable shares. Thus, the securities offered by Union Enterprises for Burns Foods were worth in the range between $117,500,000 and $130,300,000.

Dr. J. Baldwin

Dr. Baldwin an Associate Professor of Economics at Queen's University was retained by Ontario Energy Board Counsel. He addressed the following issues: pre-acquisition approval, the social contract, rules, and a compulsory market float.

Dr. Baldwin argued in favour of a pre-acquisition approval on the basis of a perceived need to screen owners of the utility. The identity of the owner may be important for public policy reasons (concentration of the market, foreign ownership or extra-provincial ownership for example) as the owner may not be a suitable partner in the social contract. The hearing would not be mandatory and would apply only to transfers of ownership of the parent company. It would not go back to the owner of the holding company. Hearings may have costs and may not solve all problems but they do represent an important option for review.

The market for corporate control is not necessarily more important in regulated industries. Efficiency is also enhanced by reason of effective regulation and competition for substitutes such as coal and oil. Therefore,

pre-acquisition approval is not necessarily an impediment to utility efficiency simply because it may inhibit some takeover bids.

Historically in Canada, regulation is based upon "implicit agreements" between the industry and the regulator. Explicit agreements set out in defined rules are inflexible and often costly to maintain and enforce. The identity of the owner of the utility is important because of the mutual trust needed to maintain implicit agreements.

Rules or explicit agreements are also important. However, rules can not deal with all possible problems, which may arise in regulation. The prominence of rules in the United States has occurred for historic reasons. Specific rules will simplify takeovers, speed up any review of transfers of ownership which may be required and make the process more predictable.

Dr. Baldwin supports affiliated interest rules which regulate the transfer of goods between affiliates and financial transfers. He is not in favour of an established set of rules on

dividend policy because this would be too restrictive.

A common float can reduce information costs to the regulator regarding the equity cost of capital. It may represent a more acceptable alternative to the regulator comparing the cost of capital to other industries further afield or to the imposition of rules restricting the diversification of holding companies because of the resulting difficulties in obtaining information.

Mr. T. R. Close

Mr. Close expressed the concerns of the Chatham and District Chamber of Commerce regarding the acquisition of Union Gas by Unicorp. Specifically, he enumerated the following concerns. The Chamber of Commerce was opposed to the concentration of ownership in the hands of a single individual and would prefer to have a utility which is widely held. It was concerned about Unicorp's speculative reputation because the continued existence of Union Gas is essential to the economic and social well being of the Chatham community. The Settlement Agreement and the Joint Undertakings were judged to be ineffectual in protecting the utility from problems relating to ownership and management. Mr. Close concluded by suggesting to the Board that it consider recommending the introduction of retroactive legislation requiring that the 20 percent rule of Section 26(2), which he interpreted on an absolute restriction be strictly enforced.

Messrs. D and N. McGeachy

Mr. D. McGeachy and Mr. N. McGeachy indicated that as minority shareholders representing the McGeachy Charitable Foundation they believed that they were treated unfairly. They said that while major institutions were able to obtain cash for their shares, individual shareholders were required to accept non-voting preferred shares. Also, Unicorp's reputation as compared to that enjoyed by the management of Union Gas will cause a serious down-grading of the utility's investment rating which will result in a higher cost for capital. They added that single ownership concentration within a utility, whether it occurs directly or indirectly, is not advisable because it effectively prohibits the small investor from investing in conservative low risk enterprises.

Mr. and Mrs. Nichol

Mr. and Mrs. Nichol appeared as minority shareholders of Union Enterprises and testified on their own behalf. Generally, they opposed the Unicorp acquisition of Union Enterprises, for two reasons. First, the offer made to the minority shareholders of Union Enterprises was financially inadequate and unfair. Second, a utility should not become part of a conglomerate because it is thus exposed to the risk of having its capital used to fund non-utility activities.

Mr. and Mrs. LaBombarde

Mr. and Mrs. LaBombarde appeared as minority shareholders of Union Enterprises and testified on their own behalf. They opposed the Unicorp acquisition on several grounds. First, the $12.50 price offered for the Union Enterprises shares was financially unfair. Also, a take-over offer should have been made for all shares. Second, dividends to be paid should not have been frozen for a three year period. Third, Unicorp's managerial philosophy is not compatible with operating a utility. Fourth, the 20 percent ownership rule in Section 26 (2) should be enforced as on absolute restriction on ownership. Fifth, Union Gas should not be permitted to diversify into non-utility activities.

Mr. T. A. Cline

Mr. Cline represented the Regional Municipality of Haldimand-Norfolk and The Corporation of the City of Chatham. He addressed issues relating to Section 26 (2) and the enforceability of undertakings.

Mr. Cline submitted that the 20 percent rule under Section 26(2) should be strictly enforced as an absolute restriction upon ownership. In the alternative he argued that where an exemption is sought it should be provided by the Ontario Energy Board pursuant to a public hearing and not by the Lieutenant Governor in Council. As a further alternative Mr. Cline suggested that the Ministry of Energy be notified of a change in control pursuant to which the Minister would give 60 days notice and invite submissions from the public.

He also expressed two concerns regarding the efficacy of the undertakings. First, he questioned the diligence of the Lieutenant Governor in Council in enforcing the undertakings. Second, he believed the OEB was powerless to monitor them.

Mr. C. M. Tatham

Mr. Tatham submitted representations on behalf of the County of Oxford.

At a meeting held on March 1, 1985 the representatives from seven southwestern Ontario Municipalities passed a resolution to the effect that a single shareholder should not be allowed to control more than 20 percent of the common shares of a utility. This resolution was passed for the following reasons. First, a franchise is a privilege granted to a utility by the customers of the municipality through their elected representatives. Second, the customers through their representatives should have a say in the rates charged and the percentage of shares owned by a single shareholder.

Mr. A. Kimpe

Mr. Kimpe appeared on his own behalf and indicated that as a landowner leasing storage to Union Gas he felt that he had not received just and fair compensation from the management of Union Gas.

Mr. Kimpe concluded that the conduct of Union Gas management could only change and improve with Unicorp's help and that they should be given an opportunity to prove themselves in this regard. Accordingly, he submitted, the Board should recommend that the Unicorp acquisition be approved.

Mr. S. Kawalec

Mr. Kawalec represented the opinions of certain intermediate and small volume industrial customers of Union Gas. Two concerns were expressed. First, the effect of the takeover upon rates. Second, the manner in which utilities should be owned and operated.

The holding company structure is difficult to monitor and regulate. Undertakings can only expose further loopholes and additional legislative rules and regulations regarding holding companies are not economically practical. However, additional rules and regulations regarding ownership and diversification should be imposed upon the activities of utilities.

Regarding diversification, Mr. Kawalec indicated that while his clients would prefer the utility not to diversify, particularly into higher risk enterprises, if such diversification does occur it should do so only with the permission of the Board. Further, where diversification into non-related enterprises has otherwise occurred such interests should be sold. He noted that customer relations would improve if utilities were restricted to utility activities. He said that his clients "only

want straightforward, down the centre gas service. Surely, this is the original concept of monopoly gas utility ... how far we have strayed."

Mr. J. R. Connacher

Mr. Connacher, the Chairman and Chief Executive Officer of Gordon Capital appeared pursuant to a subpoena. He addressed matters relating to Gordon Capital's role in the Unicorp takeover of Union Enterprises.

Mr. Connacher indicated that Mr. Mann and Mr. Leech solicited the services of Gordon Capital because it enjoys the reputation of a firm dealing in large blocks of stock. Initially the company was instructed to purchase shares in Union Enterprises and when Gordon Capital had succeeded in obtaining approximately 200,000 shares, they were instructed to undertake a takeover bid.

During the course of the takeover Gordon Capital undertook to persuade shareholders of Union Enterprises to tender their shares. Institutions, banks and trust companies were encouraged to buy Union Enterprises' shares and to trade them in exchange for Unicorp preferred shares. The Unicorp preferred shares carried a rate of return of 12 percent as compared to a 8.5 to 9 percent rate of return available for other preferred shares trading on the market. Also, the preferred shares offered by Unicorp

in exchange for Union Enterprises common shares were, due to tax advantages, very attractive to institutional investors.

Because they seem an attractive investment, a substantial number of Unicorp preferred share are currently owned by a loosely related group of companies associated with the Hees International Corporation. Representations were made to institutions outside this group. However, these other corporations were not prepared to act. The Hees International group of companies are significant purchasers of preferred shares, averaging $400,000,000 to $500,000,000 annually, and consequently were prepared to invest in Unicorp preferred shares.

Gordon Capital was successful in obtaining an average price of $12.50 in cash for the shares that it sold on behalf of its clients. The same price was available to individual shareholders because the closing stock price for Union Enterprises shares was above $12.00 for 39 out of 48 trading days. However, Mr. Connacher agreed with Mr. Kierans that if all outstanding shares in Union Enterprises had been tendered for example, on February 1, 1985 when the stock was trading at $12.50, there would be insufficient purchasing power in the

market to purchase all shares at that price. Therefore, to the extent that a noninstitutional shareholder dealt with a recognized brokerage firm who had knowledge of how the market functions he would have been entitled to the $12.50 price.

Mr. T. Eyton

Mr. Eyton, the President and Chief Executive Officer of Brascan Limited also appeared persuant to a subpoena. He addressed the following issues: the sale of shares in Union Enterprises held by the Great Lakes Group, and the reasons behind the decision to purchase Unicorp preferred shares.

Mr. Eyton indicated that in 1980 Brascan purchased shares in Union Gas and subsequently transferred them to the Great Lakes Power group of companies. This investment constitutes less than 10 percent of the total holdings of the Great Lakes Group and is thus only a portfolio investment. The presence in 1980 of Darcy McKeough as the newly appointed Chief Executive Officer induced Brascan to make this investment. At no time did Brascan desire to increase its holdings in Union Enterprises beyond the 20 percent limit.

The Great Lakes Group decided to dispose of its shares in Union Enterprises for the following general reasons. First, the Great Lakes Group had informed the Union management of its desire to sell for the past two years. Second, the reorganization of Union Enterprises lacked

managerial talent to successfully diversify. Third, the Unicorp share exchange offer satisfied the Great Lakes Group's criteria of placing the Union Enterprises shares with investors of their choice and of involvement with a responsible group.

The decision to exchange the shares held by the Great Lakes Group was made for the following specific reasons:

i) the Unicorp shares provided greater downside protection as compared against the uninflated market value of the Union Enterprises shares;
ii) Unicorp's management had a proven track record and had displayed a commitment which was backed by a substantial investment;
iii) Unicorp shares offered greater security of dividend and capital because Unicorp has a superior long term financial commitment to maintain the Union Enterprises common share dividend;
iv) Unicorp preferred shares offered a superior dividend yield to maturity in relation to other comparable securities, had an added right of retraction of the principal at seven years;

v) the warrants offered a risk free equity feature to participate in Unicorp's growth;

vi) the fixed rate dividend available on Unicorp shares provided an opportunity to match its asset - liability attributes at an attractive spread.

Since the shares are non-voting they do not provide the Great Lakes Group with any influence over Unicorp's affairs. In addition, there does not exist a collateral agreement or understanding with Unicorp regarding the Unicorp shares, and the Great Lakes Group never had an option to acquire Canada Trust shares or any other Unicorp investment positions.

Mr. J. Cockwell

Mr. Cockwell, the Executive Vice President and Chief Operating Officer of Brascan Limited, also appeared pursuant to a subpoena. He addressed the following matters: the Edper/Brascan Group holdings of Unicorp preferred shares, and the preferred share interlock between Union Shield Resources, Union Enterprises and Union Gas.

Mr. Cockwell described transactions for Unicorp preferred shares entered into by the Edper/Brascan Group of companies. All such transactions were undertaken by these companies in the normal course of business and were based exclusively on the individual investment needs of each company. Due regard was also given to the investment and tax merits afforded by the Unicorp securities. Because Unicorp enjoys an established track record, it can obtain financing, and therefore its preferred shares cannot be described as "junk bonds". Further, the Burns Foods purchase made additional blocks readily available to interested investors.

The Edper/Brascan Group possess special expertise in the preferred shares market, and this expertise has been transmitted to this group of

companies. Nonetheless, investments within the Edper/Brascan Group are made on a strictly individual basis. However, Gordon Capital who acts on behalf of the individual companies is familiar with the investment needs of the group.

Mr. Cockwell believed that the preferred share interlock should have been set up by borrowing in the utility the full amount of $233,000,000. This would have restored the utility's full equity base and would have left the money in the utility for its use. A transaction of this nature would create a "ring fence" around the utility because the only recourse of the lending bank would be to the preferred share income. In this way the only obligation of the utility would be to pay the interest on the loan which could presumably be covered from its preferred share income. It was also suggested that if the parent had guaranteed the loan to the utility the bank would have recourse to the parent. This would provide additional protection to the utility.

Mr. Paul Reichmann

Mr. Reichmann, the Senior Executive Vice President and director of Olympia & York Development Limited filed an affidavit with the Board. He addressed the following matters: the role of Ontario 499977 and the decision to invest in Unicorp preferred shares.

He explained that Ontario 499977 invests in marketable securities as a nominee for Olympia & York. This company currently holds approximately 2,000,000 preferred shares in Unicorp. The shares were purchased by Gordon Capital on the last day of the takeover bid at prices up to $12.50 per share.

This investment decision was based on the merits of the Unicorp securities and on tax reasons. Mr. Reichmann had no contact or discussions with the Edper/Brascan group of companies regarding this transaction. By reason of a prior holding of shares in Royal Trustco Limited, Olympia & York also owns 2,140,300 Class A voting shares and 1,496,968 Class II preferred shares series one, in Trilon Financial Corporation through a subsidiary of Olympia & York, namely, the Olympia & York Holdings Corporation. Through an investment in England Olympia

& York also has an investment interest in Trizec Corporation Limited. Mr. Reichman does not consider the Olympia & York group of companies to be connected to the Edper/Brascan group of companies as a result of these investments.

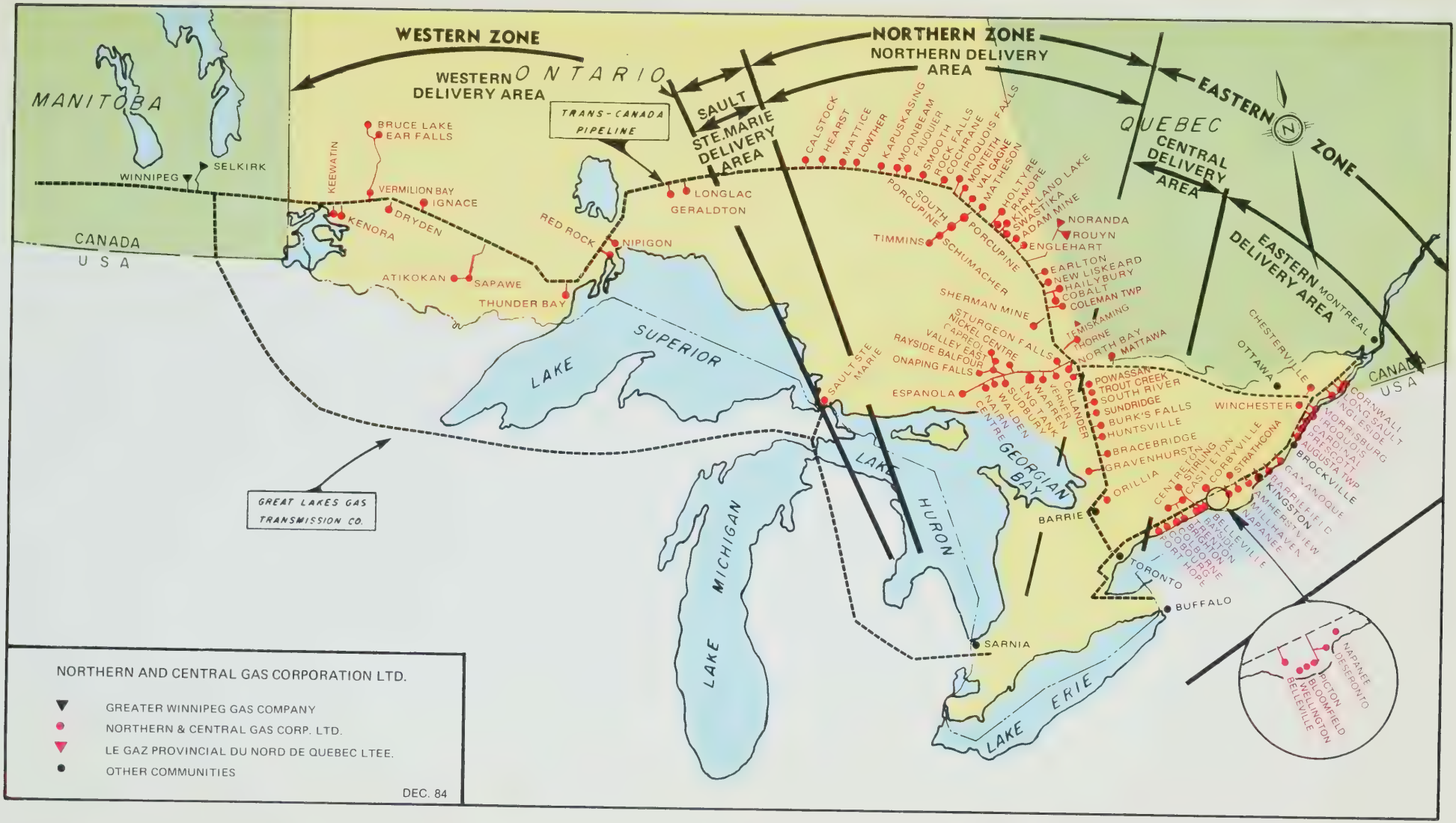
Appendix B. MAPS OF THE OPERATING AREAS OF THE THREE MAJOR NATURAL GAS UTILITIES

1. Union Gas Limited
2. The Consumers' Gas Company Ltd.
3. Northern and Central Gas Corporation Limited


Union Gas pipeline system
Primary and Secondary gas transmission and storage pipelines
Major compressor stations
Gas storage fields
Portion of transmission facilities of TransCanada PipeLines Limited, The Consumers' Gas Company, Great Lakes Gas Transmission Company Ltd. and Panhandle Eastern Pipe Line Company
OWEN SOUND
Meaford
Thornbury
Collingwood
BARRIE
Hanover
Durham
Walkerton
Mount Forest
Harriston
Palmerston
Goderich
Listowel
Fergus
TORONTO
Georgetown
Acton
Trafalgar
Clinton
Elmira
GUELPH
Milton
Seaforth
LAKE HURON
WATERLOO
KITCHENER
Mitchell
Hensall
New Hamburg
CAMBRIDGE
Oakville
Burlington
Exeter
STRATFORD
Dundas
HAMILTON
St. Marys
Bright
Paris
WOODSTOCK
BRANTFORD
Caledonia
Lobo
LONDON
Ingersoll
Waterford
Dunnville
SARNIA
Wyoming
Strathroy
Petrolia
Lambeth
Tillsonburg
Delhi
Simcoe
Nanticoke
Port Dover
ST. THOMAS
Wardsville
Dawn
Bothwell
Wallaceburg
Dresden
Thamesville
CHATHAM
Ridgetown
LAKE ST. CLAIR
WINDSOR
Blenheim
LAKE ERIE
Belle River
Tilbury
Port Alma
Essex
Amherstburg
Harrow
Leamington
Kingsville


Quebec
Ontario
New York
Georgian Bay
Lake Huron
Lake Ontario
Lake Erie
Petawawa
Pembroke
Cobden
Renfrew
Aylmer
Hull
Gatineau
Ottawa
L'Original
Hawkesbury
Vankleek Hill
Alexandria
Summerstown
Almonte
Carleton Place
Smith Falls
Perth
Madrid
Massena
Potsdam
Canton
Brockville
Penetanguishene
Midland
McNicoll
Collingwood
Stayner
Angus
Alliston
Beaverton
Lindsay
Peterborough
Campbellford
Uxbridge
Port Perry
Shelburne
Orangeville
Bolton
Hillsburgh
Richmond Hill
Stouffville
Bowmanville
Oshawa
Whitby
Ajax
Brampton
Mississauga
Metropolitan Toronto
Port Credit
Grimsby
St. Catharines
Niagara Falls
Welland
Port Colborne
Port Erie
Crowland storage
Tecumseh storage
Union storage
LEGEND
The Consumers' Gas Company Ltd.
Metro Region
Central Region (East Central)
Central Region (North Central)
Central Region (Georgian Bay)
Western Region
Provincial Gas
Ottawa Gas
Gazifère
St. Lawrence Gas
Underwater Gas Developers
The Consumers' Gas Company Ltd. distribution system
TransCanada PipeLines Limited transmission facilities
Great Lakes Gas Transmission Company transmission facilities
Union Gas Limited transmission facilities
Underground storage

DISTRIBUTION NETWORK



NCgas

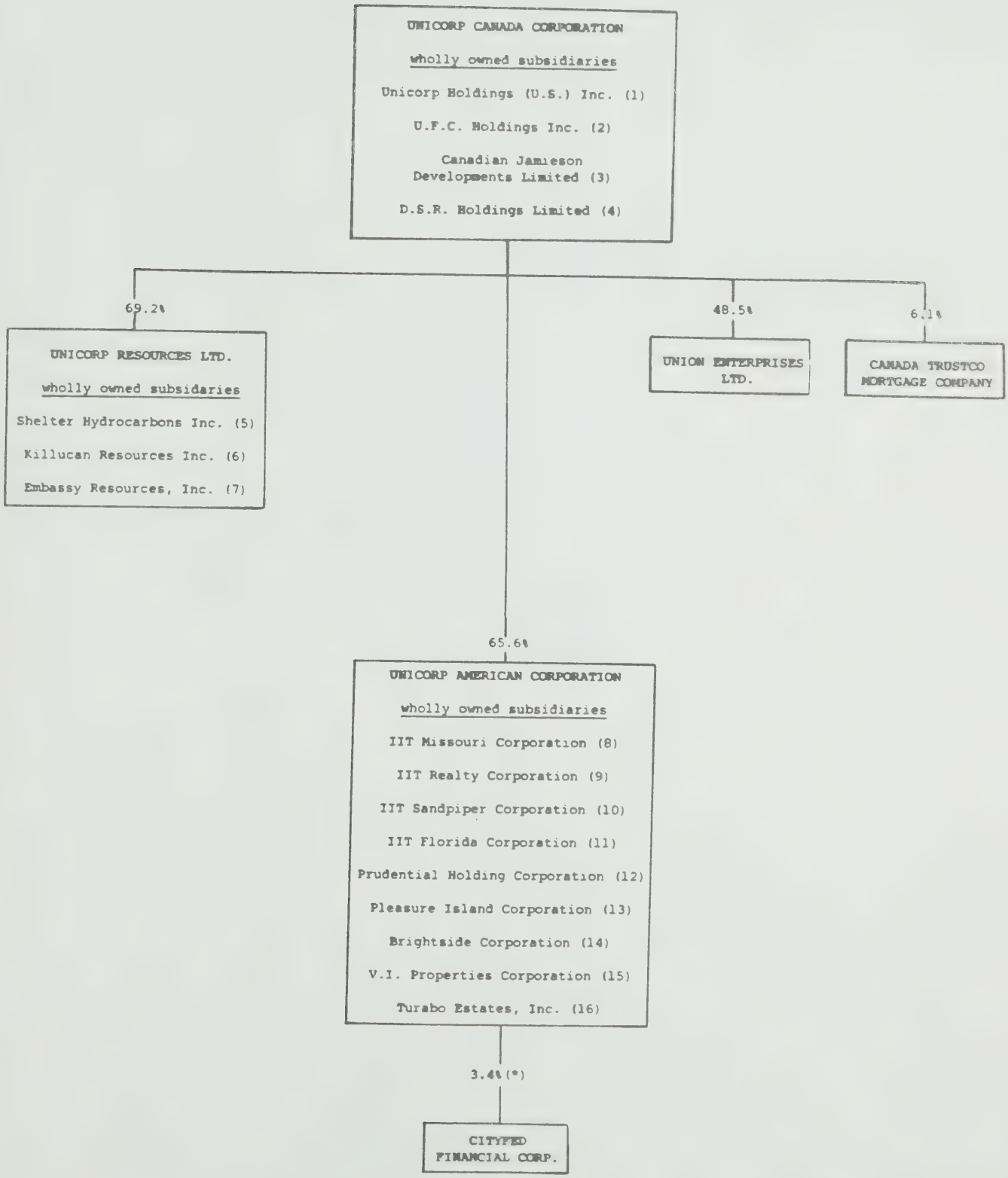
NORTHERN AND CENTRAL GAS CORPORATION LIMITED

Appendix C. CORPORATE ORGANIZATION STRUCTURE

1. Unicorp Canada Corporation
2. Union Enterprises Ltd.
3. Hiram-Walker Resources Ltd.
4. Inter-City Gas Corporation
5. Hees International Corporation

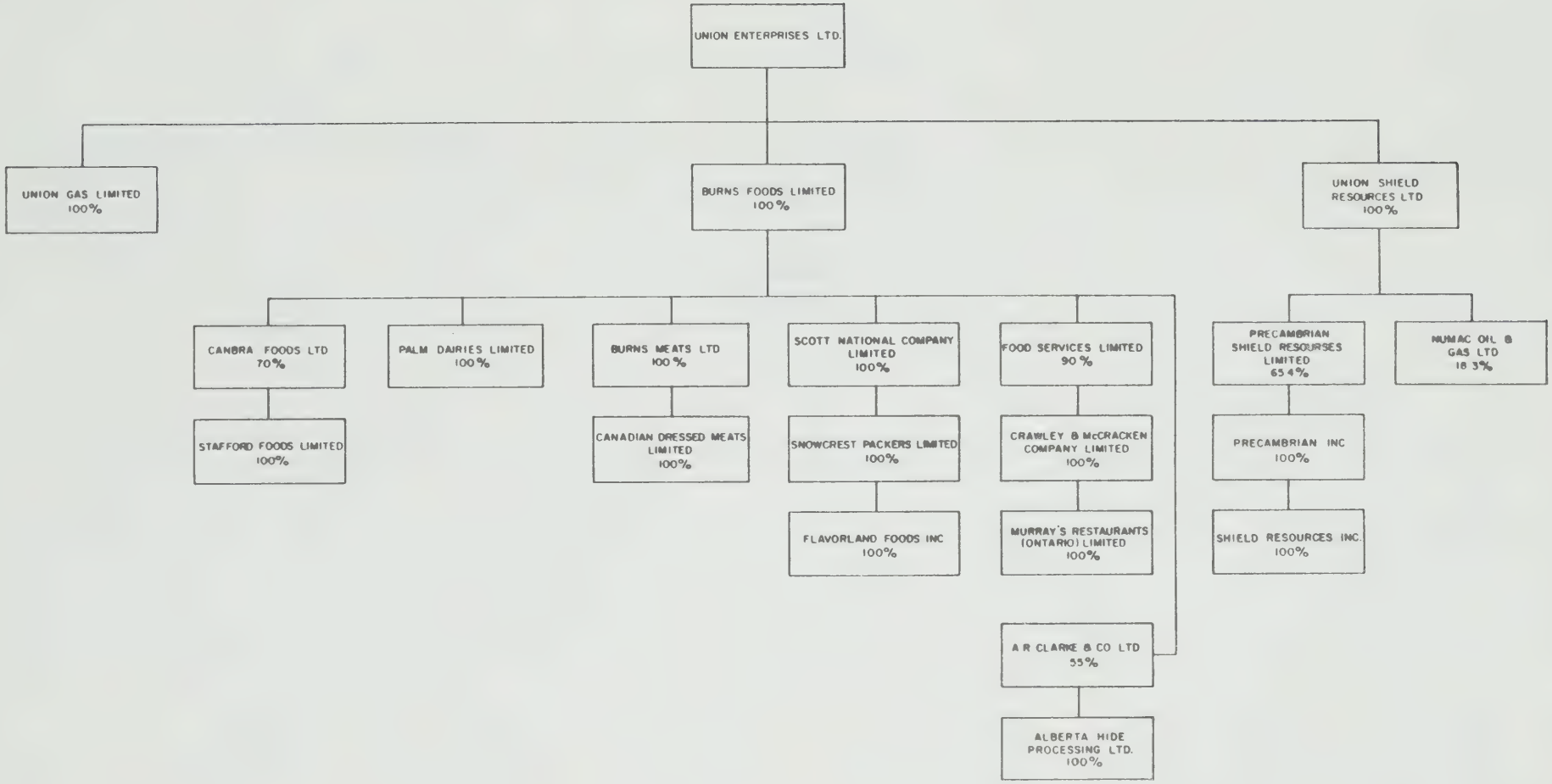
UNICORP CANADA CORPORATION

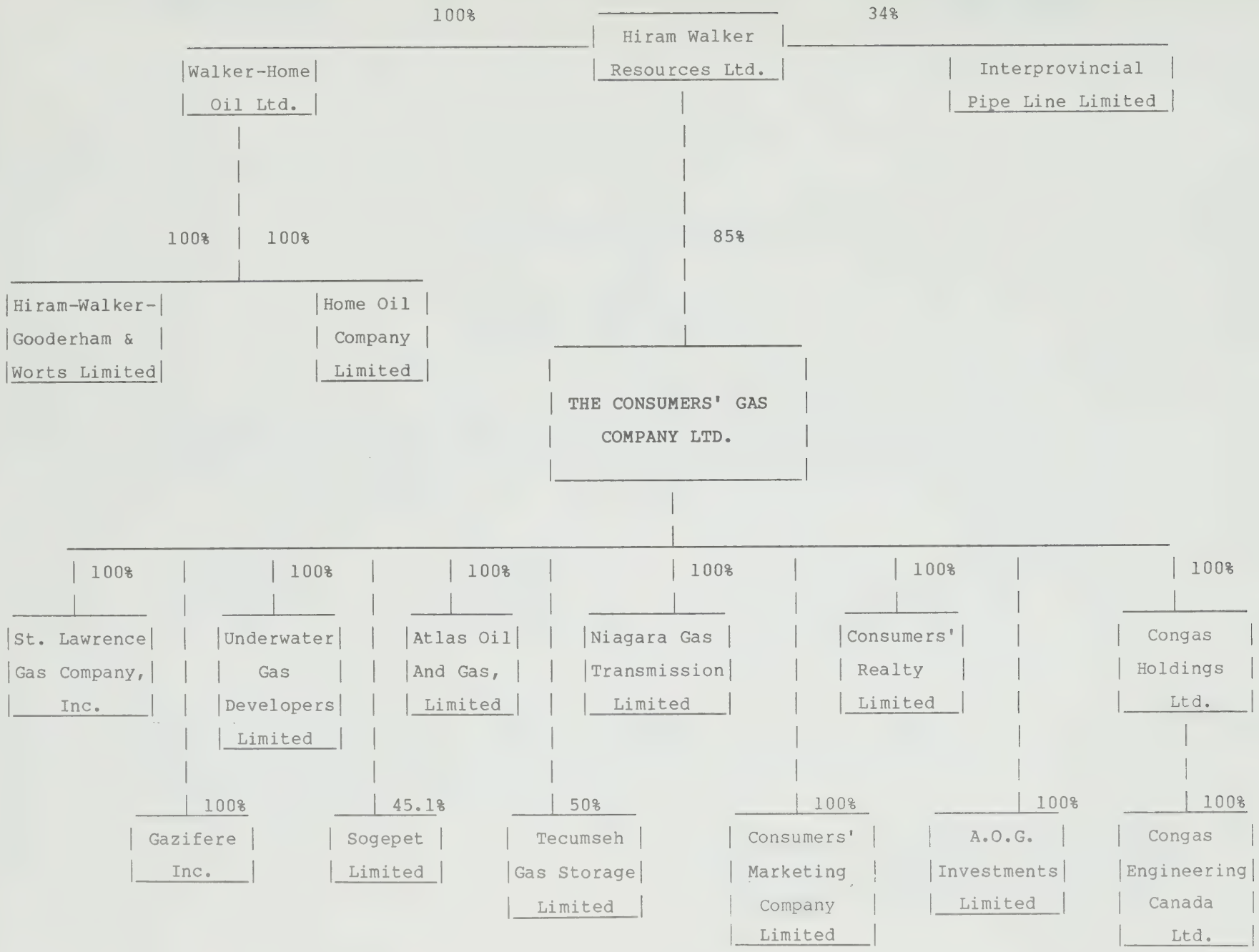
SUBSIDIARIES
AND ASSOCIATED COMPANIES
(PERCENTAGE VOTING INTEREST)



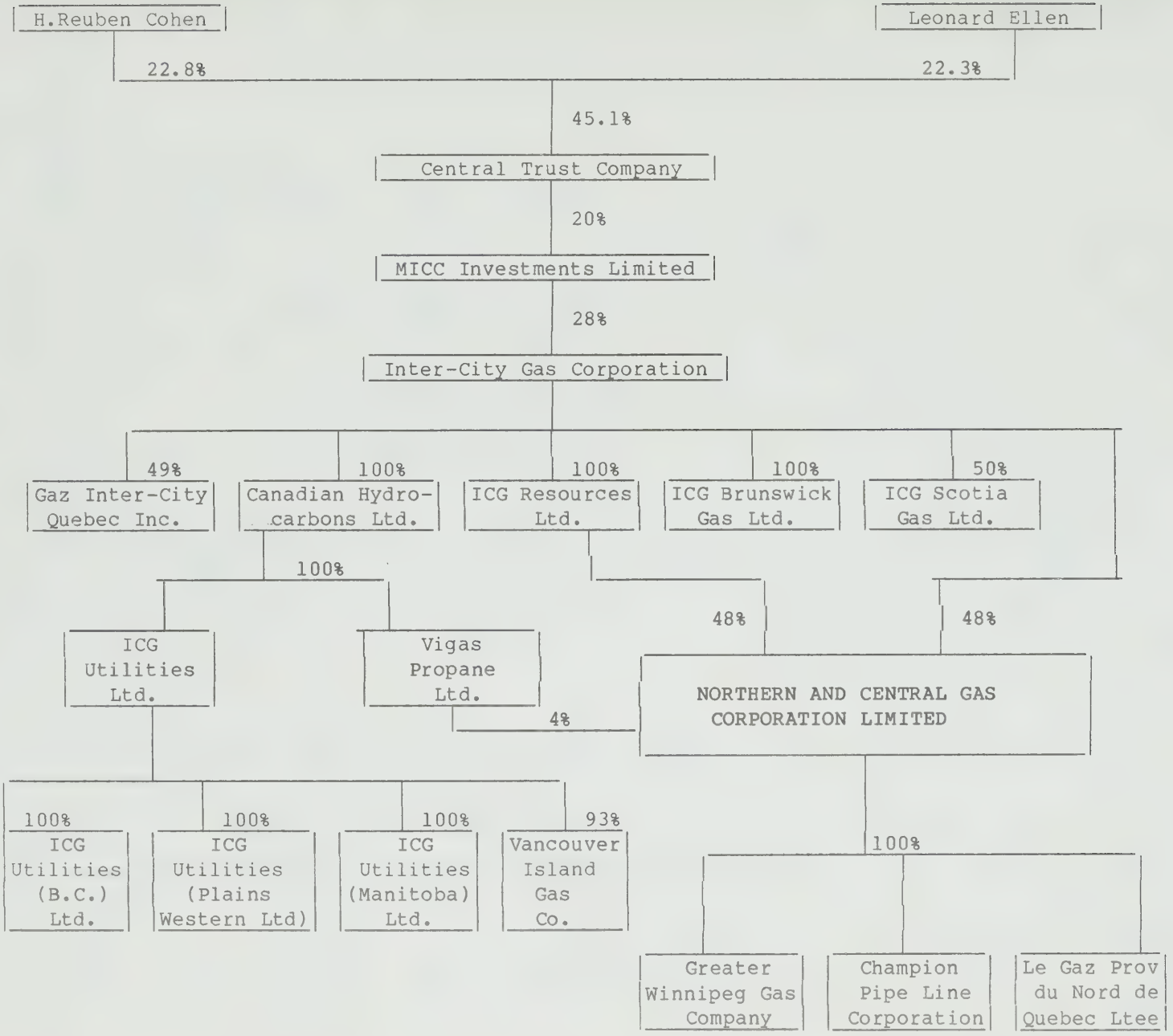
(*) 8.2% voting interest calculated on a fully diluted basis.

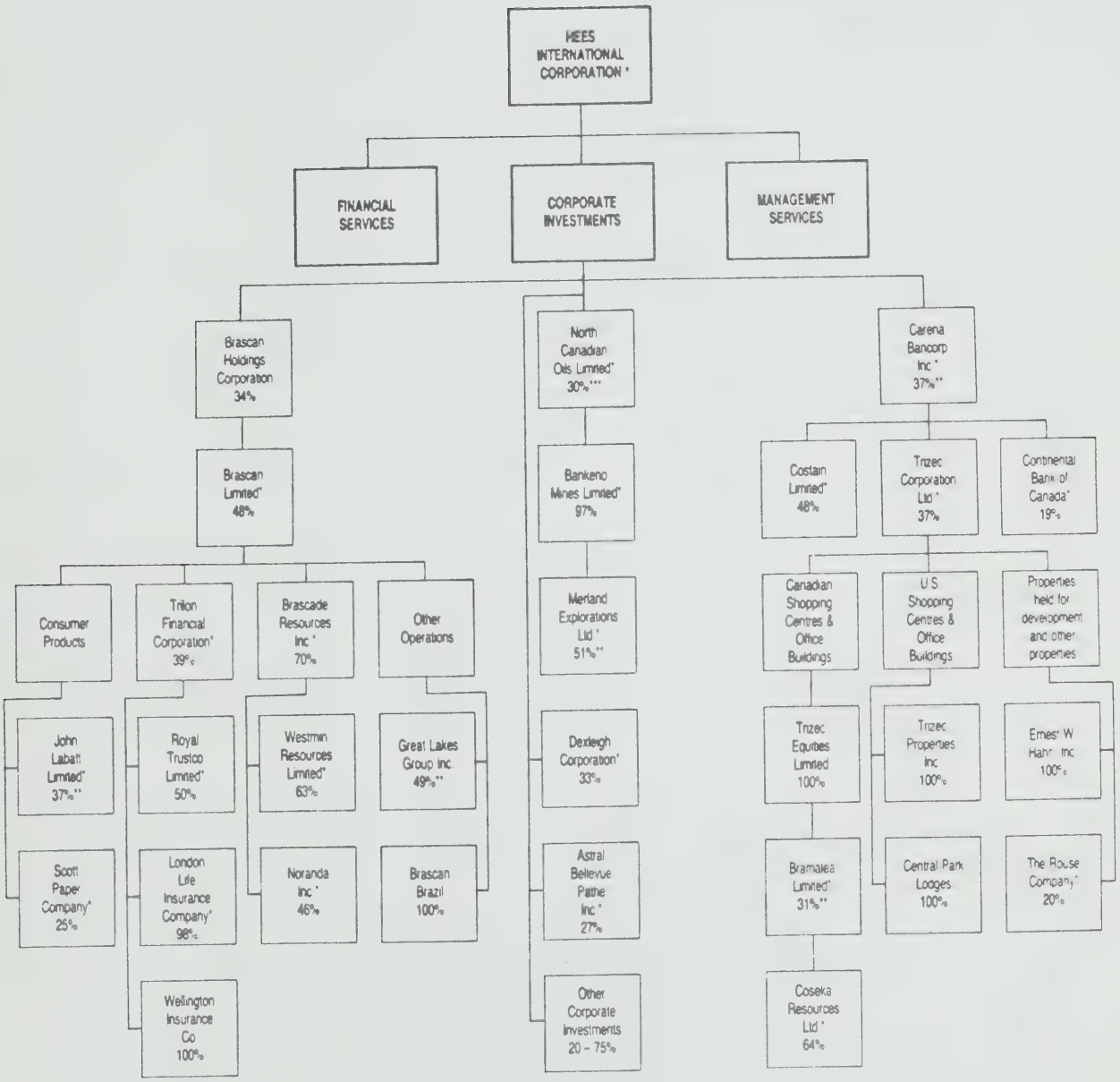
See accompanying footnotes for a description of wholly owned subsidiaries.


UNION ENTERPRISES LTD.
UNION GAS LIMITED 100%
BURNS FOODS LIMITED 100%
UNION SHIELD RESOURCES LTD 100%
CANBRA FOODS LTD 70%
PALM DAIRIES LIMITED 100%
BURNS MEATS LTD 100%
SCOTT NATIONAL COMPANY LIMITED 100%
FOOD SERVICES LIMITED 90%
PRECAMBRIAN SHIELD RESOURSES LIMITED 63.4%
NUMAC OIL & GAS LTD 18.3%
STAFFORD FOODS LIMITED 100%
CANADIAN DRESSED MEATS LIMITED 100%
SNOWCREST PACKERS LIMITED 100%
CRAWLEY & McCRACKEN COMPANY LIMITED 100%
PRECAMBRIAN INC 100%
FLAVORLAND FOODS INC 100%
MURRAY'S RESTAURANTS (ONTARIO) LIMITED 100%
SHIELD RESOURCES INC. 100%
A R CLARKE & CO LTD 55%
ALBERTA HIDE PROCESSING LTD. 100%


100%
Hiram Walker Resources Ltd.
34%
Walker-Home Oil Ltd.
Interprovincial Pipe Line Limited
100%
100%
85%
Hiram-Walker-Gooderham & Worts Limited
Home Oil Company Limited
THE CONSUMERS' GAS COMPANY LTD.
100%
St. Lawrence Gas Company, Inc.
100%
Underwater Gas Developers Limited
100%
Atlas Oil And Gas, Limited
100%
Niagara Gas Transmission Limited
100%
Consumers' Realty Limited
100%
Congas Holdings Ltd.
100%
Gazifere Inc.
45.1%
Sogepet Limited
50%
Tecumseh Gas Storage Limited
100%
Consumers' Marketing Company Limited
100%
A.O.G. Investments Limited
100%
Congas Engineering Canada Ltd.

/0086U


H.Reuben Cohen
Leonard Ellen
22.8%
22.3%
45.1%
Central Trust Company
20%
MICC Investments Limited
28%
Inter-City Gas Corporation
49%
Gaz Inter-City Quebec Inc.
100%
Canadian Hydro-carbons Ltd.
100%
ICG Resources Ltd.
100%
ICG Brunswick Gas Ltd.
50%
ICG Scotia Gas Ltd.
100%
ICG Utilities Ltd.
Vigas Propane Ltd.
48%
48%
NORTHERN AND CENTRAL GAS CORPORATION LIMITED
4%
100%
ICG Utilities (B.C.) Ltd.
100%
ICG Utilities (Plains Western Ltd)
100%
ICG Utilities (Manitoba) Ltd.
93%
Vancouver Island Gas Co.
100%
Greater Winnipeg Gas Company
Champion Pipe Line Corporation
Le Gaz Prov du Nord de Quebec Ltee



* Public companies.
** On a fully-diluted basis.
*** Direct and indirect on a fully-diluted basis.

Appendix D. UNDERTAKINGS AND ORDERS IN COUNCIL

When there has been a change in the ownership or control of one of the three major Ontario natural gas utilities, undertakings have been offered to the Lieutenant Governor with the purpose of assuring continued service to the utilty's customers. The text of these undertakings is given here together with the accompanying Order in Council.

UNDERTAKING OF NEWCO LTD.

As provided for in Order-in-Council No. 2116/75, Newco Ltd. hereby undertakes to the Lieutenant Governor in Council of Ontario on its own behalf and on behalf of Norcen Energy Resources Limited ("Norcen"), a company to be formed by the amalgamation of Newco Ltd. and Canadian Industrial Gas & Oil Ltd. ("Cigol"), that so long as Norcen and its successors have a sufficient number of the outstanding voting shares of Northern and Central Gas Corporation Limited to enable the former to exercise corporate control over Northern and Central Gas Corporation Limited, and so long as the latter company, itself or through an affiliate or subsidiary, shall carry on the business of distributing natural gas in Ontario, Norcen will,

(i) review annually with the Minister of Energy, with such detail as he may reasonably require, the present and future gas supply position of Northern and Central Gas Corporation Limited;

(ii) provide timely prior notification to the Lieutenant Governor in Council of any development or occurrence (of which Norcen has knowledge or information) following which control of Norcen (and indirectly therefore control of Northern and Central Gas Corporation Limited) could be acquired by any person or corporation distributing natural gas in Ontario;

(iii) Newco Ltd. will cause Norcen, upon its incorporation, to apply for and use its best efforts to obtain, and if granted to keep current, an exemption from the requirement to obtain approval to issue equity capital under the Alberta Gas Utilities Act similar to that now held by Cigol;

(iv) cause such portion of the earnings of Northern and Central Gas Corporation Limited to be retained as is appropriate for retention by a gas distribution utility, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern and Central Gas Corporation Limited at a level sufficient to enable Northern and Central Gas Corporation Limited to carry on its business of distributing gas in Ontario, Norcen will provide additional equity capital sufficient for that purpose, on terms at least as favourable as Northern and Central Gas Corporation Limited could have obtained itself directly from the market if the reorganization had not occurred; and, in the event an exemption is not obtained by Norcen from the Public Utilities Board of Alberta, in respect of the requirement, under the Alberta Gas Utilities Act, (mentioned in subclause (iii) for prior approval to issue capital, and Norcen is unable to obtain approval under that Act to supply such additional equity to Northern and Central Gas Corporation Limited, and is otherwise unable to supply such equity, Norcen agrees and undertakes to permit Northern and Central Gas Corporation Limited itself to raise equity from other sources including the issue of shares to the public, if required to carry on such business;

(v) Norcen will repay in each of the calendar years 1980 to 1999 inclusive an amount equal to 5% of the original principal amount of the demand promissory note to be issued by it to Northern and Central Gas Corporation Limited pursuant to the provisions of the scheme of arrangement dated December 11, 1974 by Northern and Central Gas Corporation Limited pursuant to section 193 of The Business Corporations Act, provided that all payments of principal of the said promissory note, whether made at the option of Norcen or as a result of a demand for payment by Northern and Central Gas Corporation Limited, will be applied in satisfaction of the payments due hereunder as they fall due.

IN WITNESS WHEREOF Newco Ltd. has executed this undertaking under its corporate seal at Toronto, Ontario on the 15th day of August, 1975.

NEWCO LTD.

per: _____
President

per: _____
Director

Ontario

Executive Council

O.C. 2116/75

Copy of an Order-in-Council approved by Her Honour the Lieutenant Governor, dated the 30th day of July, A.D. 1975.

The Committee of Council have had under consideration the report of the Honourable the Minister of Energy, wherein he states that,

WHEREAS Newco Limited applied to the Ontario Energy Board for leave to be granted by the Lieutenant Governor in Council, pursuant to section 26(2) of The Ontario Energy Board Act, to enable Newco Limited to acquire all of the outstanding voting shares of Northern and Central Gas Corporation Limited, and the Ontario Energy Board, after a hearing, in its Report and Opinion, recommending that such leave be granted, subject to the terms and conditions hereinafter mentioned in paragraph A;

AND WHEREAS, after consideration of the said Report and Opinion, the Minister of Energy initiated discussions with Newco Limited pursuant to which Newco Limited agreed, upon the leave applied for being granted, to give the several undertakings hereinafter mentioned in paragraph B;

The Honourable the Minister of Energy recommends that, effective on and after July 31, 1975, leave be granted to Newco Limited, pursuant to section 26(2) of The Ontario Energy Board Act, to acquire all of the outstanding voting

shares of Northern and Central Gas Corporation Limited,

A. As recommended by The Ontario Energy Board, subject to the following terms and conditions that the acquisition be,

(a) carried out in accordance with the scheme of arrangement, dated December 11, 1974, pursuant to section 193 of The Business Corporation Act, for the purpose of carrying out the amalgamation agreement of the same date between Newco Ltd. and Canadian Industrial Gas & Oil Ltd. ("Cigol"), without any modification or alteration of either unless it shall have been consented to by the Lieutenant Governor in Council; and

(b) made no later than December 31, 1975, or, if the amalgamation is not then completed, by such later date as shall have been consented to by the Lieutenant Governor in Council;

B. And upon Newco Ltd. providing to the Lieutenant Governor in Council the undertakings set out below with an assurance satisfactory to the Lieutenant Governor in Council that such undertakings shall be performed by Newco Ltd., or Norcen Energy Resources Limited ("Norcen"), namely,

(c) so long as Norcen and its successors have a sufficient number of the outstanding voting shares of Northern and Central Gas Corporation Limited to enable the former

to exercise corporate control over Northern and Central Gas Corporation Limited, and so long as the latter Company, itself or through an affiliate or subsidiary, shall carry on the business of distributing natural gas in Ontario, Norcen will,

(i) review annually with the Minister of Energy, with such detail as he may reasonably require, the present and future gas supply position of Northern and Central Gas Corporation Limited;

(ii) provide timely prior notification to the Lieutenant Governor in Council of any development or occurrence (of which Norcen has knowledge or information) following which control of Norcen (and indirectly therefore control of Northern and Central Gas Corporation Limited) could be acquired by any person or corporation distributing natural gas in Ontario;

(iii) Newco Ltd. will cause Norcen, upon its incorporation, to apply for and use its best efforts to obtain, and if granted to keep current, an exemption from the requirement to obtain approval to issue equity capital under the Alberta Gas Utilities Act similar to that now held by Cigol;

(iv) cause such portion of the earnings of Northern and Central Gas Corporation Limited to be retained as is approriate for retention by a gas distribution utility, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern and Central Gas Corporation Limited at a level sufficient to enable Northern and Central Gas Corporation Limited to carry on its business of distributing gas in Ontario, Norcen will provide additional equity capital sufficient for that

purpose, on terms at least as favourable as Northern and Central Gas Corporation Limited could have obtained itself directly from the market if the reorganization had not occurred; and, in the event an exemption is not obtained by Norcen from the Public Utilities Board of Alberta, in respect of the requirement, under the Alberta Gas Utilities Act, (mentioned in subclause (iii) for prior approval to issue capital, and Norcen is unable to obtain approval under that Act to supply such additional equity to Northern and Central Gas Corporation Limited, and is otherwise unable to supply such equity, Norcen agrees and undertakes to permit Northern and Central Gas Corporation Limited itself to raise equity from other sources including the issue of shares to the public, if required to carry on such business;

(v) Norcen will repay in each of the calendar years 1980 to 1999 inclusive an amount equal to 5% of the original principal amount of the demand promissory note to be issued by it to Northern and Central Gas Corporation Limited pursuant to the provisions of the said scheme of arrangement, provided that all payments of principal of the said promissory note, whether made at the option of Norcen or as a result of a demand for payment by Northern and Central Gas Corporation Limited, will be applied in satisfaction of the payments due hereunder as they fall due.

The Committee of Council concur in the recommendation of the Honourable the Minister of Energy and advise that the same be acted on.

Certified,

O. E. Mowat

Acting Clerk, Executive Council.

D/9

HIRAM WALKER RESOURCES LTD.

TO: THE LIEUTENANT GOVERNOR IN COUNCIL FOR THE PROVINCE OF ONTARIO

WHEREAS Hiram Walker-Consumers Home Ltd. (the "Corporation") has proposed to its shareholders a reorganization whereby a holding company will be established which will own shares of subsidiary companies carrying on the utility business, the distilled spirits business and the oil and gas exploration business; and

WHEREAS the said reorganization will be accomplished by an arrangement pursuant to The Business Corporations Act whereby shareholders of the Corporation (with the exception of the holders of the Group 1 Preference Shares) will by automatic share exchange receive substantially identical shares of Hiram Walker Resources Ltd. ("HWR"), which is presently a subsidiary of the Corporation, and HWR will become the owner of all of the issued shares of the Corporation except the said Group 1 Preference Shares; and

WHEREAS it is a condition of the reorganization that the Lieutenant Governor in Council shall have given its permission to the above-mentioned exchange of shares pursuant to or exempted the parties from compliance with

the provisions of The Ontario Energy Board Act (the "Act") without imposing any term or condition which in the opinion of the directors of the Corporation, would be unduly detrimental to the interest of the Corporation or its shareholders; and

WHEREAS in order to induce the Lieutenant Governor in Council to so grant its permission or exempt the parties from compliance with the Act, HWR has agreed to give certain undertakings to the Lieutenant Governor in Council.

NOW THEREFORE HWR hereby undertakes that so long as HWR and its successors have a sufficient number of the outstanding voting shares of the Corporation to exercise control over the Corporation, and so long as the Corporation, itself or through an affiliate or subsidiary, shall carry on the business of distributing natural gas in Ontario, HWR will

(a) provide timely notification to the Lieutenant Governor in Council of any development or occurrence (of which HWR has knowledge) which could reasonably result in the acquisition by any person of such number of any class of shares of HWR which, together with shares already held by such person or by such person and an associate or associates of such person

will in the aggregate exceed 20 per cent of the shares outstanding of that class (other than a mortgage or charge to secure a loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness), the words "person" and "associate" to have the meaning prescribed by The Ontario Energy Board Act;

(b) cause to be provided to the Corporation an additional $189 million of equity through the subscription of HWR or a third party or third parties for additional common shares of the Corporation, such additional equity to be provided to the Corporation prior to September 30, 1981;

(c) cause to be retained in the Corporation such portion of the earnings of the Corporation as may be appropriate from time to time for retention by a gas distribution utility, and to the extent that, at any time, such retained earnings are not sufficient to maintain the equity of the Corporation at a level appropriate for a gas distribution utility company to provide, within a reasonable length of time,

additional equity capital sufficient for that purpose, either directly or from other sources, including the issue of shares to the public, provided that a reasonable rate of return on equity capital be allowed. For the purposes of this undertaking, HWR shall be bound by a determination of the Ontario Energy Board (the "Board") of an appropriate level of equity capital up to the level which the Board found to be appropriate for the purposes of the Corporation's rate hearing held in the fall of 1980, as set forth in the Board's reasons for decision dated January 30, 1981;

(d) cause the board of directors of the Corporation to be comprised of a majority of directors who are independent of HWR and are representative of the communities in which the utility business is carried on provided that the term "representative" as used herein shall not be confined to persons who are elected or appointed officials of local government or agencies thereof; and

(e) not permit or direct the Corporation to borrow for or guarantee the obligations of HWR or

other subsidiaries of HWR.

DATED this 21st day of April, 1981.

HIRAM WALKER RESOURCES LTD.

by:

President and Chief
Executive Officer

Ontario
Executive Council

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

the appended Regulation be made under the Ontario Energy Board Act.

Recommended _____
Minister of Energy

Concurred _____
Chairman

Approved and Ordered May 14, 1981
Date

_____
Lieutenant Governor

D/16

R.O. c200 / 81

REGULATION TO AMEND
REGULATION 626 OF REVISED REGULATIONS OF ONTARIO, 1970
MADE UNDER THE
ONTARIO ENERGY BOARD ACT

1. Regulation 626 of Revised Regulations of Ontario, 1970 is amended by adding thereto the following section:

5c. Hiram Walker Resources Ltd. is exempted from the operation of or compliance with subsection 26(2) of the Act in respect of the acquisition by way of share exchange of all of the outstanding 7-1/2 per cent voting preference shares, 9 per cent convertible preference shares and common shares of Hiram Walker-Consumers Home Ltd. pursuant to an arrangement made under the provisions of the Business Corporations Act between Hiram Walker-Consumers Home Ltd. and its shareholders dated the fifteenth day of December, 1980.

UNDERTAKINGS

TO: THE LIEUTENANT GOVERNOR IN COUNCIL OF
THE PROVINCE OF ONTARIO

WHEREAS Inter-City Gas Corporation, ICG Resources Ltd. and Vigas Propane Ltd. (herein together referred to as "Inter-City") by an agreement dated October 30, 1984 have agreed to buy and Norcen Energy Resources Limited ("Norcen") has agreed to sell all of the common shares of Northern and Central Gas Corporation Limited ("Northern");

AND WHEREAS, as part of the said transaction, Northern will transfer to Inter-City Gas Corporation an unsecured demand note issued by Norcen payable to Northern on which there is currently outstanding approximately $47 million, receiving in return an identical promissory note (the "Inter-City Note") issued by Inter-City Gas Corporation and payable to Northern;

AND WHEREAS the said transaction cannot be concluded without first obtaining the leave of the Lieutenant Governor in Council pursuant to Section 26 of the Ontario Energy Board Act;

AND WHEREAS pursuant to the said Act, the Ontario Energy Board has, following a public hearing, submitted to the Lieutenant Governor in Council its report and opinion dated January 16, 1985;

AND WHEREAS the Board's opinion is that with the provision of a bank guarantee of the Inter-City Note and certain undertakings by Inter-City, the transaction will meet the test of the public interest and would be recommended for approval:

NOW THEREFORE with a view to persuading the Lieutenant Governor in Council to grant the leave necessary under Section 26 of the Ontario Energy Board Act to enable the said transaction to be concluded, the undersigned do hereby jointly and severally undertake and agree as follows, for so long as Inter-City and its successors have a sufficient number of the outstanding voting shares of Northern to enable Inter-City to exercise corporate control over Northern, and for so long as Northern, itself or through a corporation over which it exercises corporate control, shall carry on the business of distributing natural gas in Ontario:

1. Inter-City and Northern will cause such portion of the current and future earnings of Northern to be retained in Northern as is from time to time appropriate for retention by a gas distribution utility regulated by the Ontario Energy Board, and to the extent that such retained earnings are not sufficient to maitain the equity of Northern at a level from time to time deemed appropriate for Northern by the Ontario Energy Board, Inter-City will provide additional equity capital sufficient for that purpose, on terms at least as favourable as Northern could itself obtain directly from the market; and, in the event Inter-City is unable or unwilling to supply such equity, Inter-City agrees and undertakes to permit Northern itself to raise equity from other sources including the issuance of shares to the public.

2. Northern will not pay dividends, or redeem, purchase or otherwise reduce or affect the amount or level of shareholders' equity of Northern, except in accordance with a dividend or distribution policy consistent with applicable business corporations statutes, trust indentures and Ontario Energy Board findings as to appropriate levels of equity of Northern.

3. Northern shall not borrow for, make loans or advances to, guarantee the obligations of or otherwise assume or become responsible for the obligations of Inter-City or any body directly or indirectly owned or controlled by Inter-City, without the prior consent of the Minister of Energy of Ontario.

4. The undersigned shall give timely notice to the Lieutenant Governor in Council of any occurrence (including, without limitation, any known, proposed or intended sale, disposition or transfer of shares of Northern or Inter-City) known to them which could result in any person acquiring such number of voting shares of Northern or Inter-City which, together with shares held by such person and by an associate or associates of such person, will in the aggregate exceed 20% of the voting shares outstanding of Northern or Inter-City (using, for the purpose of this Undertaking, the definitions provided in the Ontario Energy Board Act).

5. None of the costs of or incidental to the said transaction will be borne by Northern or included in the utility cost-of-service calculations of Northern or Inter-City Gas Corporation.

6. Northern's head office and main operating office shall be maintained in Ontario.

7. Northern will maintain on its Board of Directors at least two residents of its franchise area who at the time of their election or appointment have no pecuniary interest in Inter-City consolidated and no business connection with Inter-City consolidated, Northern, or any other natural gas distribution or transmission company.

8. Inter-City and Northern shall make reasonable efforts to accomplish a restructuring of Northern such that there will result a corporation whose assets, liabilities and activities relate only to the regulated natural gas distribution business in Ontario.

9. Inter-City will pay the principal on the Inter-City Note in instalments or $1,672,000 on December 31, 1988 and $4,148,000 on December 31 in each year 1989 to 1999 inclusive, or on such accelerated basis as the parties thereto may agree upon.

10. Inter-City shall, without expense to Northern, forthwith arrange a guarantee by a Canadian chartered bank of the Inter-City Note, the same to be maintained in force for so long as the Inter-City Note is held directly or indirectly by the corporation which operates the regulated natural gas distribution business in Ontario presently operated by Northern.

IN WITNESS WHEREOF the undersigned have respectively caused these presents to be executed this 18th day of January 1985.

INTER-CITY GAS CORPORATION

Per _____

ICG RESOURCES LTD.

Per _____

VIGAS PROPANE LTD.

Per _____

NORTHERN AND CENTRAL GAS CORPORATION LIMITED

Per _____

President

Order in Council

Ontario
Executive Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

WHEREAS Inter-City Gas Corporation, ICG Resources Ltd. and Vigas Propane Ltd. (herein together referred to as "Inter-City") by an agreement dated October 30, 1984 have agreed to buy and Norcen Energy Resources Limited ("Norcen") has agreed to sell all of the common shares of Northern and Central Gas Corporation Limited ("Northern");

AND WHEREAS, as part of the said transaction, Northern will transfer to Inter-City Gas Corporation an unsecured demand note issued by Norcen payable to Northern on which there is currently outstanding approximately $47 million, receiving in return an identical promissory note (the "Inter-City Note") issued by Inter-City Gas Corporation and payable to Northern;

AND WHEREAS, as part of the said transaction, Inter-City Gas Corporation will issue to Norcen as fully paid 110,000 First Preference Shares 8% Series A (the "Preference Shares") having a redemption value of $700 each, whereupon Norcen will own in excess of 20% of the voting First Preference Shares of Inter-City;

AND WHEREAS the said transaction cannot be concluded without first obtaining the leave of the Lieutenant Governor in Council pursuant to Section 26 of the Ontario Energy Board Act;

AND WHEREAS pursuant to the said Act, the Ontario Energy Board has, following a public hearing, submitted to the Lieutenant Governor in Council its report and opinion dated January 16, 1985;

AND WHEREAS the Board's opinion is that with the provision of a bank guarantee of the Inter-City Note and certain undertakings by Inter-City, the transaction will meet the test of the public interest and would be recommended for approval;

AND WHEREAS Inter-City and Northern have jointly and severally undertaken and agreed as follows, for so long as Inter-City and its successors have a sufficient number of the outstanding voting shares of Northern to enable Inter-City to exercise corporate control over Northern, and for so long as Northern, itself or through a corporation over which it exercises corporate control, shall carry on the business of distributing natural gas in Ontario:

Inter-City and Northern will cause such portion of the current and future earnings of Northern to be retained in Northern as is from time to time appropriate for retention by a gas distribution utility regulated by the Ontario Energy Board, and to the extent that such retained earnings are not sufficient to maintain the equity of Northern at a level from time to time deemed appropriate for Northern by the Ontario Energy Board, Inter-City will provide additional equity capital sufficient for that purpose, on terms at least as favourable as Northern could itself obtain directly from the market; and, in the event Inter-City is unable or unwilling to supply such equity, Inter-City agrees and undertakes to permit Northern itself to raise equity from other sources including the issuance of shares to the public.

2. Northern will not pay dividends, or redeem, purchase or otherwise reduce or affect the amount or level of shareholders' equity of Northern, except in accordance with a dividend or distribution policy consistent with applicable business corporations statutes, trust indentures and Ontario Energy Board findings as to appropriate levels of equity of Northern.

3. Northern shall not borrow for, make loans or advances to, guarantee the obligations of or otherwise assume or become responsible for the obligations of Inter-City or any body directly or indirectly owned or controlled by Inter-City, without the prior consent of the Minister of Energy of Ontario.

4. The undersigned shall give timely notice to the Lieutenant Governor in Council of any occurrence (including, without limitation, any known, proposed or intended sale, disposition or transfer of shares of Northern or Inter-City) known to them which could result in any person acquiring such number of voting shares of Northern or Inter-City which, together with shares held by such person and by an associate or associates of such person, will in the aggregate exceed 20% of the voting shares outstanding of Northern or Inter-City (using, for the purpose of this Undertaking, the definitions provided in the Ontario Energy Board Act).

5. None of the costs of or incidental to the said transaction will be borne by Northern or included in the utility cost-of-service calculations of Northern or Inter-City Gas Corporation.

6. Northern's head office and main operating office shall be maintained in Ontario.

7. Northern will maintain on its Board of Directors at least two residents of its franchise area who at the time of their election or appointment have no pecuniary interest in Inter-City consolidated and no business connection with Inter-City consolidated, Northern, or any other natural gas distribution or transmission company.

8. Inter-City and Northern shall make reasonable efforts to accomplish a restructuring of Northern such that there will result a corporation whose assets, liabilities and activities relate only to the regulated natural gas distribution business in Ontario.

9. Inter-City will pay the principal on the Inter-City Note in instalments of $1,672,000 on December 31, 1988 and $4,148,000 on December 31 in each year 1989 to 1999 inclusive, or on such accelerated basis as the parties thereto may agree upon.

10. Inter-City shall, without expense to Northern, forthwith arrange a guarantee by a Canadian chartered bank of the Inter-City Note, the same to be maintained in force for so long as the Inter-City Note is held directly or indirectly by the corporation which operates the regulated natural gas distribution business in Ontario presently operated by Northern.

NOW THEREFORE leave is hereby granted pursuant to Section 26 of the Ontario Energy Board Act:

a) to the acquisition by Inter-City of all of the outstanding common shares of Northern; and

b) to the acquisition by Norcen of all of the Preference Shares;

both as contemplated by the said Agreement dated October 30, 1984.

Recommended _____ Concurred _____
Minister of Energy Chairman

Approved and Ordered January 24, 1985 _____
Date Lieutenant Governor

E X H I B I T " A "

TO: The Honourable The Lieutenant Governor in Council, under the Ontario Energy Board Act, concerning the Reorganization of Union Gas Limited and creation of Union Enterprises Ltd.

U N D E R T A K I N G S

The Applicants in this Petition, Union Gas Limited and Union Enterprises Ltd., do hereby undertake:

1. Indebtedness, Guarantees, Etc.

The Applicants undertake that Union Gas Limited, as constituted following the Reorganization, will not become responsible for the indebtedness for borrowed money of Union Enterprises Ltd., Union Shield Resources Ltd., or any other corporation which is an "affiliate" of Union Gas Limited (as defined in The Business Corporations Act, 1982 as from time to time amended or re-enacted), save for corporations which may be (i) subsidiaries of Union Gas Limited and (ii) "distributors", "producers", "storage companies" or "transmitters" (all as defined in the Ontario Energy Board Act, as from time to time amended or re-enacted) or otherwise subject to regulation under the said Act, in each case without the prior consent of the Lieutenant Governor in Council or the Ontario Energy Board, as may be appropriate in the circumstances.

2. Equity of Union Gas Limited

After giving effect to the Reorganization, the Applicants undertake as follows:

(i) that the portion of the current and future earnings of Union Gas Limited as is appropriate to its regulated utility operations will be retained in Union Gas Limited;

(ii) that Union Gas Limited will not pay dividends, or otherwise redeem, purchase, reduce or affect the amount or level of shareholders' equity of Union Gas Limited, except in accordance with a dividend or distribution policy consistent with applicable business corporations statutes and trust indentures and other borrowing instruments applicable to Union Gas Limited; and

(iii) that the Applicants will make reasonable efforts to retain in Union Gas Limited a level or amount of shareholders' equity appropriate to the regulated utility operations of Union Gas Limited, subject to being granted a competitive and appropriate rate of return on shareholders' equity and the components thereof consistent with the utility-capital requirements of Union Gas Limited.

If the Shareholders' equity of Union Gas Limited should fall below the levels or amounts determined by reference to the undertakings given in this

section 2, then Union Enterprises Ltd. will make reasonable efforts to provide or cause to be provided to Union Gas Limited, directly or indirectly, additional shareholders' equity to attain the levels or amounts required, subject in each case to prevailing capital market conditions and the ability of Union Enterprises Ltd. and/or Union Gas Limited to raise equity capital on a competitive and capital-market related basis.

3. Change or Potential Change of Control

Given that, by reason of the Reorganization, the Applicant Union Enterprises Ltd. will not be subject to subsection 26(2) of the Ontario Energy Board Act, the Applicants herein undertake that the Applicants, and each of them, will give timely notice to the Lieutenant Governor in Council of any occurrence (including, without limitation, any known, proposed or intended sale, disposition or transfer of shares of Union Gas Limited or Union Enterprises Ltd.) known to them which would result in any person acquiring such number of shares of Union Gas Limited or Union Enterprises which, together with shares held by such person and by associate or associates of such person, will in the aggregate exceed 20% of the shares outstanding of that class of Union Gas Limited or Union Enterprises Ltd. (using, for the purpose of this Undertaking, the definitions provided in the Ontario Energy Board Act as from time to time amended or re-enacted).

4. Costs of Reorganization

The Applicants undertake that Union Gas Limited will not include any of the costs of the Reorganization in the utility cost-of-service calculations.

5. Management Costs

The Applicants undertake that the shared or joint costs of management, and other associated general admnistration and overhead costs, of Union Gas Limited, Union Enterprises Ltd., Union Shield Resources Ltd. and other corporations which directly or indirectly are part of the Union Group of corporations, will be allocated fairly among such corporations.

MADE on December 14, 1984.

UNION GAS LIMITED

By: _____
Chairman, President and
Chief Executive Officer

By: _____ c/s
Vice-President Finance
and Corporate Development

UNION ENTEPRISES LTD.

By: _____
Chairman, President and
Chief Executive Officer

By: _____ c/s
Treasurer

Ontario
Executive Council

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

the appended Regulation be made under the Ontario Energy Board Act.

Recommended _____
Minister of Energy

Concurred _____
Chairman

Approved and Ordered December 20, 1984
Date

_____
Lieutenant Governor

D/31

ROC552/84

REGULATION TO AMEND
REGULATION 700 OF REVISED REGULATIONS OF ONTARIO, 1980
MADE UNDER THE
ONTARIO ENERGY BOARD ACT

1. Regulation 700 of Revised Regulations of Ontario, 1980, as amended by section 1 of Ontario Regulation 330/81, section 1 of Ontario Regulation 805/82 and section 1 of Ontario Regulation 820/82, is further amended by adding thereto the following section:

5d.-(1) Union Gas Limited is exempted from the operation of or compliance with subsection 26(1) of the Act in respect of the amalgamation of Union Gas Limited and UNG (Subco) Limited pursuant to a scheme and plan of arrangement under the Business Corporations Act, 1982 between Union Gas Limited, Union Enterprises Ltd., Union Shield Resources Ltd., UNG (Subco) Limited and their respective shareholders.

(2) Union Enterprises Ltd. is exempted from the operation of or compliance with subsection 26(2) of the Act in respect of its acquisition by way of share exchange of all of the outstanding common shares of Union Gas Limited pursuant to the scheme and plan of arrangement referred to in subsection (1).

SCHEDULE 6

UNDERTAKING

TO: The Honourable Lieutenant Governor in Council

Unicorp Canada Corporation ("Unicorp") and Union Enterprises Ltd. ("Enterprises") hereby undertake that if and so long as:

(i) Unicorp controls Enterprises; and

(ii) Enterprises controls Union Gas Limited ("Gas"); and

(iii) Gas remains a utility subject to regulation under the Ontario Energy Board Act as from time to time amended, re-enacted or substituted (the "OEB Act")

then Unicorp will vote its shares of Enterprises and Enterprises will vote its shares of Gas to accomplish the following:

1. Definition of Control

For the purposes of this undertaking "control" shall mean the right directly or indirectly to elect a majority of the directors of a corporation whether by ownership of shares, contract or otherwise and "controlled" shall have a similar meaning.

2. Indebtedness of Gas

Gas will not become responsible for the indebtedness of Unicorp, Enterprises, Union Shield Resources Ltd. ("Resources"), Burns Foods Limited or any other "affiliate" (as defined in the Business Corporations Act (the "OBC Act")) of Gas, except for subsidiaries of Gas that are subject to regulation under the OEB Act, without the prior consent of the Ontario Energy Board.

3. Loans and Investments by Gas

Gas shall not borrow for, make loans or advances to, guarantee the obligations of or otherwise assume or become responsible for the obligations of Unicorp, Enterprises, Resources, Burns Foods Limited or any other affiliate of Gas, except for subsidiaries of Gas that are subject to regulation under the OEB Act, without the prior consent of the Ontario Energy Board.

4. Financing of Gas

For three years from the date hereof, Gas will not increase its aggregate common share cash dividend beyond $27,000,000 per annum (plus an appropriate amount to reflect any additional common equity investment in Gas) plus an amount equal to the dividend received by Gas in respect of its holding

of preference shares of Resources. Nor will Gas otherwise reduce shareholders' equity by way of redemption or purchase of common shares for cancellation if the effect would be to reduce the shareholders' equity of Gas below that used to determine rates in the most recently decided Gas rate case before the Ontario Energy Board from time to time.

Unicorp, Enterprises and Gas will cause such portion of the current and future earnings of Gas to be retained in Gas as is from time to time appropriate for retention by a gas distribution utility regulated by the Ontario Energy Board, and to the extent that such retained earnings are not or are expected not to be sufficient to maintain the equity of Gas (for this purpose, equity shall include both common and preferred shares) at a level from time to time deemed appropriate for Gas by the Ontario Energy Board, Gas will be permitted to raise equity at the times and in the manner considered prudent by its Board of Directors. If Enterprises or Unicorp through Enterprises wish to provide Gas with additional equity capital, they may only do so on terms at least as favourable to Gas as Gas could itself obtain directly in the capital markets.

Unicorp through Enterprises, or Enterprises may provide financing to Gas but only on terms no less favourable

to Gas as Gas could itself obtain directly in the capital markets. In the event Unicorp or Enterprises is unable or unwilling to supply such financing, Enterprises and Unicorp agree and undertake to permit Gas itself to raise financing from other sources, including the issuance of securities to the public.

5. Regulated Activities

All current and future regulated utility activities under the control of Unicorp or Enterprises and governed by the OEB Act will be maintained in Gas or a subsidiary thereof unless the Ontario Energy Board otherwise determines.

6. Change of Control

The Ministry of Energy will be notified of any potential change of control of Enterprises or Unicorp.

7. Board of Gas

Members of the Board of Directors of Gas shall consist of:

(a) eight directors (the "Unrelated Directors") nominated by those directors of Enterprises elected by the shareholders of Enterprises

other than Unicorp. The Unrelated Directors shall consist of persons who are not officers, directors or employees of and who have no pecuniary interest in Unicorp, Enterprises, any corporation controlled by either of them, any affiliate of either of them or any utility company (other than Gas) governed by the OEB Act (other than the ownership of shares of any such corporation representing less than one-half of 1% of the outstanding shares of any class of any such corporation). Not more than two of the Unrelated Directors may be officers or employees of Gas;

(b) five directors (the "Joint Directors") nominated by the Board of Directors of Enterprises. Not more than two of the Joint Directors may be officers, directors or employees of Unicorp, Enterprises or any corporation controlled by either of them or any affiliate of either of them (other than Gas); and

(c) two directors (the "Other Directors") nominated by Unicorp who may be officers or employees of Unicorp.

Enterprises undertakes to vote its shares of Gas to elect as directors of Gas the persons nominated as above, and Unicorp undertakes to vote its shares in Enterprises to cause Enterprises to so vote its shares in Gas.

The Directors of Gas shall have all the usual powers of directors under the OBC Act, provided all transactions between Gas or any corporation controlled by Gas on the one hand and Unicorp, Enterprises or any corporation controlled by either of them or any affiliate of either (other than Gas or any corporation controlled by Gas) on the other hand shall be subject to the approval of a majority of the Unrelated Directors.

At least 40 percent of the directors of Gas shall be resident in the franchise area of Gas.

If it is determined that the efficient management of Gas would be best served by a Board of Directors of a different size, the respective number of Unrelated Directors, Joint Directors and Unicorp Directors shall be increased or decreased proportionately as the case may be, provided that in no event shall Unrelated Directors constitute less than 51% of the directors of Gas.

8. Acquisition Premium

No part of the premium arising on the acquisition of shares of Enterprises by Unicorp shall be added to the rate base of Gas.

9. Head Office

The head office of Gas and all appropriate head office operations will be maintained in the City of Chatham.

10. Undertakings of Enterprises

The undertakings previously agreed to by Enterprises in its Petition to The Honourable Lieutenant Governor in Council dated December 14, 1984 are hereby adopted by Unicorp.

DATED this day of April, 1985.

UNION ENTERPRISES LTD.

Per:_____

c/s

Per:_____

UNICORP CANADA CORPORATION

Per:_____

c/s

Per:_____

EXHIBIT "A"

TO: The Honourable The Lieutenant Governor in Council, under the Ontario Energy Board Act, concerning the Reorganization of Union Gas Limited and creation of Union Enterprises Ltd.

UNDERTAKINGS

The Applicants in this Petition, Union Gas Limited and Union Enterprises Ltd., do hereby undertake:

1. Indebtedness, Guarantees, Etc.

The Applicants undertake that Union Gas Limited, as constituted following the Reorganization, will not become responsible for the indebtedness for borrowed money of Union Enterprises Ltd., Union Shield Resources Ltd., or any other corporation which is an "affiliate" of Union Gas Limited (as defined in The Business Corporations Act, 1982 as from time to time amended or re-enacted), save for corporations which may be (i) subsidiaries of Union Gas Limited and (ii) "distributors", "producers", "storage companies" or "transmitters" (all as defined in the Ontario Energy Board Act, as from time to time amended or re-enacted) or otherwise subject to regulation under the said Act, in each case without the prior consent of the Lieutenant Governor in Council or the Ontario Energy Board, as may be appropriate in the circumstances.

2. Equity of Union Gas Limited

After giving effect to the Reorganization, the Applicants undertake as follows:

(i) that the portion of the current and future earnings of Union Gas Limited as is appropriate to its regulated utility operations will be retained in Union Gas Limited;

(ii) that Union Gas Limited will not pay dividends, or otherwise redeem, purchase, reduce or affect the amount or level of shareholders' equity of Union Gas Limited, except in accordance with a dividend or distribution policy consistent with applicable business corporations statutes and trust indentures and other borrowing instruments applicable to Union Gas Limited; and

(iii) that the Applicants will make reasonable efforts to retain in Union Gas Limited a level or amount of shareholders' equity appropriate to the regulated utility operations of Union Gas Limited, subject to being granted a competitive and appropriate rate of return on shareholders' equity and the components thereof consistent with the utility-capital requirements of Union Gas Limited.

If the Shareholders' equity of Union Gas Limited should fall below the levels or amounts determined by reference to the undertakings given in this

section 2, then Union Enterprises Ltd. will make reasonable efforts to provide or cause to be provided to Union Gas Limited, directly or indirectly, additional shareholders' equity to attain the levels or amounts required, subject in each case to prevailing capital market conditions and the ability of Union Enterprises Ltd. and/or Union Gas Limited to raise equity capital on a competitive and capital-market related basis.

3. Change or Potential Change of Control

Given that, by reason of the Reorganization, the Applicant Union Enterprises Ltd. will not be subject to subsection 26(2) of the Ontario Energy Board Act, the Applicants herein undertake that the Applicants, and each of them, will give timely notice to the Lieutenant Governor in Council of any occurrence (including, without limitation, any known, proposed or intended sale, disposition or transfer of shares of Union Gas Limited or Union Enterprises Ltd.) known to them which would result in any person acquiring such number of shares of Union Gas Limited or Union Enterprises which, together with shares held by such person and by associate or associates of such person, will in the aggregate exceed 20% of the shares outstanding of that class of Union Gas Limited or Union Enterprises Ltd. (using, for the purpose of this Undertaking, the definitions provided in the Ontario Energy Board Act as from time to time amended or re-enacted).

4. Costs of Reorganization

The Applicants undertake that Union Gas Limited will not include any of the costs of the Reorganization in the utility cost-of-service calculations.

5. Management Costs

The Applicants undertake that the shared or joint costs of management, and other associated general admnistration and overhead costs, of Union Gas Limited, Union Enterprises Ltd., Union Shield Resources Ltd. and other corporations which directly or indirectly are part of the Union Group of corporations, will be allocated fairly among such corporations.

MADE on December 14, 1984.

UNION GAS LIMITED

By: _____
Chairman, President and
Chief Executive Officer

By: _____ c/s
Vice-President Finance
and Corporate Development

UNION ENTEPRISES LTD.

By: _____
Chairman, President and
Chief Executive Officer

By: _____ c/s
Treasurer

Ontario
Executive Council

Order in Council

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and concurrence of the Executive Council, orders that

the appended Regulation be made under the Ontario Energy Board Act.

Recommended _____
Minister of Energy

Concurred _____
Chairman

Approved and Ordered December 20, 1984
Date

_____
Lieutenant Governor

D/31

ROC552/84

REGULATION TO AMEND
REGULATION 700 OF REVISED REGULATIONS OF ONTARIO, 1980
MADE UNDER THE
ONTARIO ENERGY BOARD ACT

1. Regulation 700 of Revised Regulations of Ontario, 1980, as amended by section 1 of Ontario Regulation 330/81, section 1 of Ontario Regulation 805/82 and section 1 of Ontario Regulation 820/82, is further amended by adding thereto the following section:

5d.-(1) Union Gas Limited is exempted from the operation of or compliance with subsection 26(1) of the Act in respect of the amalgamation of Union Gas Limited and UNG (Subco) Limited pursuant to a scheme and plan of arrangement under the Business Corporations Act, 1982 between Union Gas Limited, Union Enterprises Ltd., Union Shield Resources Ltd., UNG (Subco) Limited and their respective shareholders.

(2) Union Enterprises Ltd. is exempted from the operation of or compliance with subsection 26(2) of the Act in respect of its acquisition by way of share exchange of all of the outstanding common shares of Union Gas Limited pursuant to the scheme and plan of arrangement referred to in subsection (1).

SCHEDULE 6

UNDERTAKING

TO: The Honourable Lieutenant Governor in Council

Unicorp Canada Corporation ("Unicorp") and Union Enterprises Ltd. ("Enterprises") hereby undertake that if and so long as:

(i) Unicorp controls Enterprises; and

(ii) Enterprises controls Union Gas Limited ("Gas"); and

(iii) Gas remains a utility subject to regulation under the Ontario Energy Board Act as from time to time amended, re-enacted or substituted (the "OEB Act")

then Unicorp will vote its shares of Enterprises and Enterprises will vote its shares of Gas to accomplish the following:

1. Definition of Control

For the purposes of this undertaking "control" shall mean the right directly or indirectly to elect a majority of the directors of a corporation whether by ownership of shares, contract or otherwise and "controlled" shall have a similar meaning.

2. Indebtedness of Gas

Gas will not become responsible for the indebtedness of Unicorp, Enterprises, Union Shield Resources Ltd. ("Resources"), Burns Foods Limited or any other "affiliate" (as defined in the Business Corporations Act (the "OBC Act")) of Gas, except for subsidiaries of Gas that are subject to regulation under the OEB Act, without the prior consent of the Ontario Energy Board.

3. Loans and Investments by Gas

Gas shall not borrow for, make loans or advances to, guarantee the obligations of or otherwise assume or become responsible for the obligations of Unicorp, Enterprises, Resources, Burns Foods Limited or any other affiliate of Gas, except for subsidiaries of Gas that are subject to regulation under the OEB Act, without the prior consent of the Ontario Energy Board.

4. Financing of Gas

For three years from the date hereof, Gas will not increase its aggregate common share cash dividend beyond $27,000,000 per annum (plus an appropriate amount to reflect any additional common equity investment in Gas) plus an amount equal to the dividend received by Gas in respect of its holding

of preference shares of Resources. Nor will Gas otherwise reduce shareholders' equity by way of redemption or purchase of common shares for cancellation if the effect would be to reduce the shareholders' equity of Gas below that used to determine rates in the most recently decided Gas rate case before the Ontario Energy Board from time to time.

Unicorp, Enterprises and Gas will cause such portion of the current and future earnings of Gas to be retained in Gas as is from time to time appropriate for retention by a gas distribution utility regulated by the Ontario Energy Board, and to the extent that such retained earnings are not or are expected not to be sufficient to maintain the equity of Gas (for this purpose, equity shall include both common and preferred shares) at a level from time to time deemed appropriate for Gas by the Ontario Energy Board, Gas will be permitted to raise equity at the times and in the manner considered prudent by its Board of Directors. If Enterprises or Unicorp through Enterprises wish to provide Gas with additional equity capital, they may only do so on terms at least as favourable to Gas as Gas could itself obtain directly in the capital markets.

Unicorp through Enterprises, or Enterprises may provide financing to Gas but only on terms no less favourable

to Gas as Gas could itself obtain directly in the capital markets. In the event Unicorp or Enterprises is unable or unwilling to supply such financing, Enterprises and Unicorp agree and undertake to permit Gas itself to raise financing from other sources, including the issuance of securities to the public.

5. Regulated Activities

All current and future regulated utility activities under the control of Unicorp or Enterprises and governed by the OEB Act will be maintained in Gas or a subsidiary thereof unless the Ontario Energy Board otherwise determines.

6. Change of Control

The Ministry of Energy will be notified of any potential change of control of Enterprises or Unicorp.

7. Board of Gas

Members of the Board of Directors of Gas shall consist of:

(a) eight directors (the "Unrelated Directors") nominated by those directors of Enterprises elected by the shareholders of Enterprises

other than Unicorp. The Unrelated Directors shall consist of persons who are not officers, directors or employees of and who have no pecuniary interest in Unicorp, Enterprises, any corporation controlled by either of them, any affiliate of either of them or any utility company (other than Gas) governed by the OEB Act (other than the ownership of shares of any such corporation representing less than one-half of 1% of the outstanding shares of any class of any such corporation). Not more than two of the Unrelated Directors may be officers or employees of Gas;

(b) five directors (the "Joint Directors") nominated by the Board of Directors of Enterprises. Not more than two of the Joint Directors may be officers, directors or employees of Unicorp, Enterprises or any corporation controlled by either of them or any affiliate of either of them (other than Gas); and

(c) two directors (the "Other Directors") nominated by Unicorp who may be officers or employees of Unicorp.

Enterprises undertakes to vote its shares of Gas to elect as directors of Gas the persons nominated as above, and Unicorp undertakes to vote its shares in Enterprises to cause Enterprises to so vote its shares in Gas.

The Directors of Gas shall have all the usual powers of directors under the OBC Act, provided all transactions between Gas or any corporation controlled by Gas on the one hand and Unicorp, Enterprises or any corporation controlled by either of them or any affiliate of either (other than Gas or any corporation controlled by Gas) on the other hand shall be subject to the approval of a majority of the Unrelated Directors.

At least 40 percent of the directors of Gas shall be resident in the franchise area of Gas.

If it is determined that the efficient management of Gas would be best served by a Board of Directors of a different size, the respective number of Unrelated Directors, Joint Directors and Unicorp Directors shall be increased or decreased proportionately as the case may be, provided that in no event shall Unrelated Directors constitute less than 51% of the directors of Gas.

8. Acquisition Premium

No part of the premium arising on the acquisition of shares of Enterprises by Unicorp shall be added to the rate base of Gas.

9. Head Office

The head office of Gas and all appropriate head office operations will be maintained in the City of Chatham.

10. Undertakings of Enterprises

The undertakings previously agreed to by Enterprises in its Petition to The Honourable Lieutenant Governor in Council dated December 14, 1984 are hereby adopted by Unicorp.

DATED this day of April, 1985.

UNION ENTERPRISES LTD.

Per:_____

c/s

Per:_____

UNICORP CANADA CORPORATION

Per:_____

c/s

Per:_____